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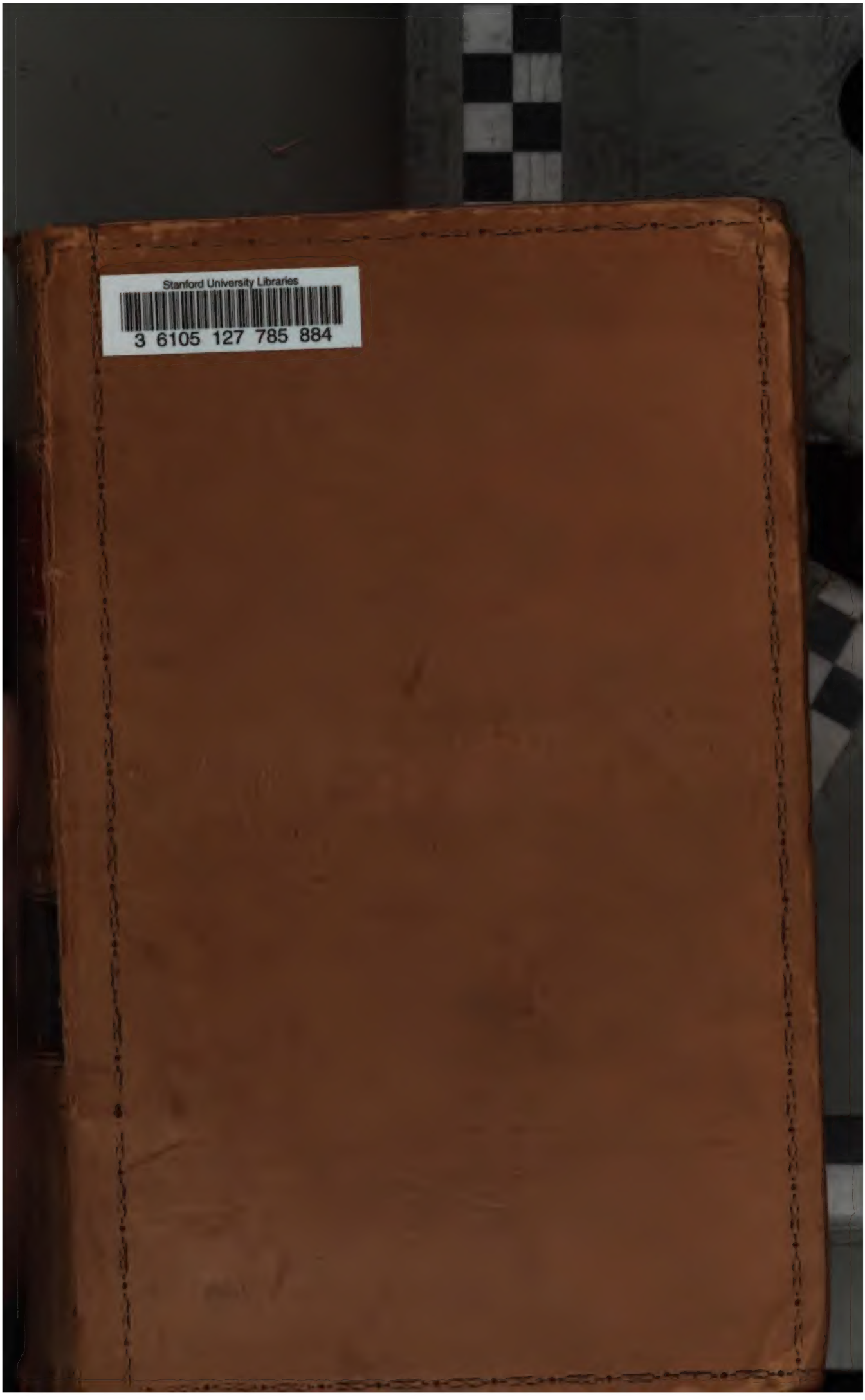
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THE

REPORTS OF THE COMMITTEES

OF THE

SENATE OF THE UNITED STATES

FOR THE

FIRST SESSION OF THE THIRTY-FIFTH CONGRESS.

IN TWO VOLUMES.

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OF

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35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 1.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 22, 1857.—Ordered to be printed.

MR. MASON made the following

REPORT.

[To accompany Bill S. 28.]

The Committee on Foreign Relations, to whom was referred the memorial of Alexander J. Atocha praying that his claims against Mexico, disallowed by the commissioners under the treaty of Guadaloupe Hidalgo, may be investigated, and, if found just, paid by the United States, have had the same under consideration, and now report:

That at the last session this case was fully examined by this committee, and a report made thereon, accompanied by a bill. On a re-examination the committee concur therein, and now make it part hereof, and report the same bill for the relief of the petitioner.

IN THE SENATE OF THE UNITED STATES, *January* 14, 1857.

The Committee on Foreign Relations, to whom was referred the memorial of Alexander J. Atocha, praying that his claims against Mexico, disallowed by the commissioners under the treaty of Guadalupe Hidalgo, may be investigated, and if found just paid by the United States, have patiently considered the subject, and now report:

That the memorialist was a citizen of the United States residing in Mexico, when, on the 26th of February, 1845, he received from that government an order "to leave the city of Mexico within the period of eight days for Vera Cruz, in order to depart from the republic."

It appears that the memorialist at the time protested, through Mr. Shannon, the American minister, against this order, as a violation of the treaty of April 5, 1831, between the United States and Mexico, and notifying the latter government that he would hold it responsible for the losses he might sustain by reason thereof.

Forced by this order to retire from the Mexican territory within the period of eight days, the memorialist alleges that he sustained great pecuniary loss; and that he filed his claim specifying such loss, with the vouchers sustaining the same, before the board of commissioners appointed under the treaty of Guadalupe Hidalgo, which he alleges

was unjustly rejected by that board, and he therefore petitions Congress for redress.

Believing that it would be dangerous to go behind the decision of the commissioners, unless it should appear that they have erred in the law applied to the case, your committee have examined with care the grounds assigned for an adverse decision in this case, and are satisfied that the commissioners erred in the law upon which they predicated their decision.

The commissioners assume, in their opinion, that the loss of the memorialist, by reason of his expulsion from Mexico, is established by the proofs filed by him, and decide against the validity of his claim exclusively upon the assumption that the order of expulsion was legal and proper, because, as they assume, of the complicity of the memorialist with Santa Anna in his resistance to the government *de facto* in their efforts to depose him as the president of the republic.

The commissioners assume that the connexion of the memorialist with the political movements of Santa Anna is established—first, by the fact that he remained there with Santa Anna until he was forced to abandon the government and leave the Mexican territory; and, secondly, because Mr. Shannon, the American minister, did not reply to a communication of the secretary for foreign affairs of Mexico, in which that officer, in acknowledging the receipt of the protest of the memorialist against the order of expulsion, says that Mr. Atocha "was one of the principal agents who wrought against the government, as is notorious, and *as his excellency Mr. Shannon himself well knows*.

The error of the first of these assumptions of fact by the commissioners is now established by the certificate of the officer having charge of the archives of the Mexican government, which states that Mr. Atocha does not appear to have had any connexion with the movements of Santa Anna; and by the letter of Santa Anna himself, who, on the part of Mexico, made the treaty of Guadalupe Hidalgo, stating emphatically that Mr. Atocha never had any political connexion with him, and that he remained with him by his invitation, because "in those times of disorder and insubordination, he could not separate himself from him without imminent risk."

The error of the second assumption of fact by the commissioners is established by the letter of our minister, Mr. Shannon, in which he expresses the conviction that the memorialist was not in any manner connected with the political movements of Santa Anna, and that he did not reply to the communication of the Mexican minister for foreign affairs, (not because he knew the correctness of his charge against Mr. Atocha,) but because the memorialist had left the country before the receipt of that communication, &c.

But, for the purpose of the argument, assume, contrary to the fact, that the commissioners were right in saying that Mr. Atocha was connected with the political movements of Santa Anna, will it follow that the government of Mexico was authorized to issue the order of expulsion against Atocha? The solution of this question will depend upon the construction of the treaty of 1831 between the United States and Mexico.

The 26th article of that treaty was intended to provide for the protection of the citizens of the two nations in the event of war between them, and the stipulation is: "That if war should break out between the two contracting parties, there should be allowed the term of six months to the merchants residing on the coast, and one year to those residing in the interior of the States and Territories of each other, respectively, to arrange their business, dispose of their effects, or transport them wheresoever they may please, giving them a safe conduct to protect them to the port they may designate. Those citizens who may be established in the States and Territories aforesaid, exercising any other occupation or trade, shall be permitted to remain in the uninterrupted enjoyment of their liberty and property so long as they conduct themselves peaceably and do not commit any offence against the laws; and their goods and effects, of whatever class and condition they may be, shall not be subject to any embargo or sequestration whatever, nor to any charge nor tax other than may be established upon similar goods and effects belonging to the citizens of the State in which they reside, respectively; nor shall the debts between individuals, nor moneys in the public funds, or in public or private banks, nor shares in companies be confiscated, embargoed, or detained."

During the late war with Mexico many citizens of the United States, who were residing as merchants in the territory of that republic at the time war was declared to exist between the two countries, were summarily expelled, in disregard of this stipulation of the treaty of 1831, and most of the claims presented to and allowed by the board of commissioners appointed under the treaty of 1848 were for damages consequent upon such violation of the treaty of 1831.

The 14th article of the treaty of 1831 was designed to secure to the citizens of the two republics, respectively, protection to their persons and property in time of peace; and, after stipulating for such protection, the two governments contract and agree "that the citizens of either party shall enjoy, *in every respect*, the same rights and privileges, either in prosecuting or *defending* their rights of person or of property, as the citizens of the country where the cause of action may be tried."

At the date of the order of expulsion of Mr. Atocha, Mexico and the United States were at peace with each other, and it necessarily follows, in the opinion of your committee, that for any offence with which he may have been charged Mr. Atocha was entitled, under this article of the treaty, to be tried, and to have afforded to him all the means of a fair trial which are provided for in that article.

It seems to your committee to be also very clear that the Mexican government, under this treaty stipulation, possessed no other or greater power to punish a citizen of the United States domiciled within her territory than she possessed to punish one of her own citizens for a similar offence; and they are advised that the Mexican government did not possess, under the constitution and laws of that republic, the power to expel a Mexican citizen without trial for any offence. Indeed, the minister for foreign affairs who issued the order of expulsion against Mr. Atocha, in response to the letter of the American minister, which had enclosed the protest of Mr. Atocha

against the legality of the order, and his notice of intention to claim damages for the losses which it would occasion him, says, "that his government is authorized by the laws and constitution of the republic to expel from its limits *non-naturalized foreigners* pernicious to the country."

For the reasons assigned, your committee are of opinion that the expulsion of Mr. Atocha from the Mexican territory was a violation of the stipulations of the 14th article of the treaty of 1831, and consequently that he should have been awarded by the board of commissioners organized under the treaty of Guadalupe Hidalgo such damages as he could show were sustained by him in consequence of that expulsion.

Your committee are advised that of the three and one quarter millions of dollars stipulated by the fifteenth article of the treaty of Guadalupe Hidalgo to be appropriated to the payment of claims of citizens of the United States against Mexico, the sum of about a quarter of a million of dollars still remains in the treasury, and consequently to that extent the fund set apart for that purpose still exists to indemnify Mr. Atocha, if he can establish his claim by satisfactory proofs.

Your committee have not deemed it their duty to investigate the quantum of indemnity to which Mr. Atocha may be entitled. And, it being conceded that he was and is a citizen of the United States, they have confined themselves to the inquiry, whether his claim was intended to be provided for by the treaty of Guadalupe Hidalgo, and the affirmative of this question is, in their opinion, clearly demonstrated by the papers and proofs in the case.

Among the papers filed by Mr. Atocha your committee find the instructions of Santa Anna, then the president of the republic of Mexico, to the minister of his government, charged with the negotiation of the treaty, directing him to have the name of Mr. Atocha inserted in the treaty as one whose claim was to be paid under its provisions, and they find other and repeated recognitions of its justice as against Mexico, from the obligations of which that government claims to be released, solely because of the release by the United States, in that treaty, of all claims of its citizens against Mexico. We find that Mr. Almonte, the accredited minister of that republic to this government, was instructed to see that this claim, "the most just of any which had been presented," should be paid from the fund which Mexico had provided by the sale of a part of her territory for the liquidation of claims of citizens of the United States against her.

With the presentation of another view of this subject your committee will close this report.

After the board of commissioners had closed their labors, many citizens of the United States whose claims had been rejected petitioned Congress to review the decision of that board, and the Senate of the United States appointed a special committee to sit during the recess of Congress, with power to send for persons and papers, and with instructions to examine each case and report such as, in their judgment, were entitled to relief.

That committee, in discharge of the duty assigned them, did inves-

tigate every claim which had been presented to the Senate for relief, and in every case, except this of Mr. Atocha, reported definitively. In his case no report was made because of an equal division of that committee upon his title to relief, so that this is the only case which has not received the supervision of the Senate, and it therefore appears to your committee that for this reason, also, the memorial is entitled to have his claim now investigated, and affirmatively decided upon by the government.

Your committee, in accordance with these views, have prepared, and submit herewith, a bill for the relief of the memorialist, which directs that his claim shall be investigated by the proper accounting officers of the treasury, and providing for the payment of such amount as shall be found due him; provided, that the amount so paid shall not exceed the balance of the fund provided by the treaty of Guadalupe Hidalgo which remains unapplied to the objects of that treaty.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 2.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 22, 1857.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Bill S. 1.]

The Committee on Foreign Relations, to whom was referred the memorial of George P. Marsh, late minister resident of the United States to the Ottoman Porte, praying compensation for extra duties performed by him on a special mission to Greece, and for judicial services, under the act of August 11, 1848, *have had the same under consideration, and now report:*

That the committee concurring fully in the views presented in report No. 534, made by the Senate Committee on Foreign Relations, February 20, 1855, hereby adopt the same, and in accordance therewith report back the bill for the relief of the memorialist, and recommend its passage.

IN THE SENATE OF THE UNITED STATES, *February* 20, 1855.

The Committee on Foreign Relations, to whom was referred the memorial of George P. Marsh, late minister resident of the United States to the Ottoman Porte, praying compensation for extra duties performed by him on a special mission to Greece, and for judicial services, under the act of August 11, 1848, *have had the same under consideration, and now report:*

Mr. Marsh's memorial is in the following words, viz:

MEMORIAL OF GEORGE P. MARSH, OF VERMONT,

Asking an appropriation for the compensation of his services as minister resident to the Ottoman Porte, under the act of August 11, 1848, *imposing judicial duties on the minister, and of his services under a special mission to the government of Greece.*

To the Honorable the Senate and House of Representatives of the United States in Congress assembled:

Your memorialist, a citizen of the State of Vermont, respectfully epresents that, up on the 29th day of May, 1849, he was appointed

minister resident to the Ottoman Porte, and having entered upon the duties of his mission, he continued in charge of the same until the 19th day of December, 1853, when he had his final audience of leave.

By an act of Congress, approved on the 11th day of August, 1848, certain judicial duties were imposed on the commissioner of the United States to China, the minister resident of the United States to the Ottoman Porte, (sec. 22,) and the American consuls in both those countries; and by the 18th section of the act it was provided that a compensation of one thousand dollars per annum, in addition to his salary, should be paid to the "commissioner," in consideration of the duties imposed upon him by the act.

The predecessor of your memorialist, the Hon. Dabney S. Carr, claimed the payment of this sum in addition to his salary, but the Treasury Department refused to allow the same, on the ground that, though judicial duties were imposed by the act upon both the commissioner to China and the minister to Turkey, the compensation was intended to be given to the commissioner alone.

Upon his return to the United States, Mr. Carr presented his memorial to Congress praying the payment of various sums of money claimed by him and disallowed by the accounting officers; and, at the first session of the thirty-second Congress, by an amendment to the civil and diplomatic appropriation bill, the said sum of one thousand dollars per year, in addition to the salary, together with other moneys, was, as your memorialist is informed and believes, allowed to Mr. Carr for the performance of the judicial services aforesaid, from the date of the passage of the act to his final departure from Constantinople. Your memorialist conceives that this allowance by Congress is a legislative construction of the true intent and meaning of the act of 1848, and that he is therefore entitled to the same annual amount, but the accounting officers have credited him his salary only.

Your memorialist further shows that, by special instructions under date of April 29, 1852, the Department of State ordered your memorialist to proceed to Athens, in Greece, on board a vessel of the Mediterranean squadron, to investigate certain complaints preferred by Dr. Jonas King, an American citizen resident in Greece, against the government and the judicial tribunals of that country, report thereon, and, "after transmitting his report, to remain at Athens, or in its neighborhood, till he heard from the department." In pursuance of these instructions your memorialist embarked for Athens, as soon as a ship was ready to receive him, and arrived at that city on the 31st day of July, 1852. He immediately engaged in the intricate and laborious investigations committed to him; and having completed his reports in the month of October following, he transmitted them to the State Department, and, in compliance with his instructions, awaited the further orders of the department.

Upon the 5th of February, 1853, the President of the United States, through the State Department, instructed your memorialist to enter into communication with the government of Greece, and endeavor to obtain redress for the wrongs which Dr. King had suffered at the hands of that government and its judicial tribunals.

Your memorialist accordingly commenced a negotiation with the

minister of foreign affairs, and remaind at Athens in the prosecution of the same until the 25th of June, 1853, when the alarming posture of affairs at Constantinople, in his judgment, required his immediate return thither. and he accordingly proceeded to that city, but the correspondence with the Greek minister was continued until the recall of your memorialist.

By the original instructions of the State Department, your memorialist was directed to "keep an account of his travelling expenses whilst engaged in carrying out the instructions," and he accordingly presented an account, covering only some trifling disbursements for stationery, copying, &c , and his bare personal expenses, which has been allowed and paid.

Your memorialist further shows that, by the performance of the duties of the special mission committed to him, his household expenses were much augmented, and that the loss of rent, (his house having remained unoccupied during his absence,) the sacrifice on the sale of horses and stores upon his departure, the expenses of protecting his house and other property, and other contingencies, amounted to more than the entire sum received by him for personal expenses, and that he is consequently a loser to a considerable amount by the performance of the arduous duties imposed upon him.

Your memorialist therefore prays that an appropriation may be made for such reasonable compensation as to your honorable body shall seem meet for the services and expenses aforesaid.

All of which is respectfully submitted.

GEORGE P. MARSH.

BURLINGTON, VERMONT, *December* 1, 1854.

The Secretary of State, to whom the memorial was referred by the committee, with a request for such information on the subject as the department might afford, in his reply, dated January 26, 1855, fully confirms the statements of the memorial, and "bears cheerful tesimony to the importance and peculiar character of the duties imposed upon him in his special mission to Greece, and to the fidelity and ability with which they were performed."

In view of the extra trouble and expense attendant upon the special mission to Greece, the committee are of opinion that the memorialist should be allowed the sum of four thousand five hundred dollars for extra compensation, together with the expenses incurred by him on account of said mission, the amount of which expenses to be ascertained, in the absence of regular vouchers, by the certificate of the party.

Compensation for judicial services having been allowed to the predecessor of the memorialist, by the act of August 31, 1852, making appropriation for the civil and diplomatic expenses of the government, the committee can perceive no just reason why a similar allowance should not be made to the present memorialist during his continuance in the same mission. They report a bill accordingly, and recommend its passage.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 3.

IN THE SENATE OF THE UNITED STATES.

JANUARY 4, 1858.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 38.]

The Committee on Private Land Claims, to which was referred the "memorial of John R. Temple, praying a confirmation of his title to a tract of land within the Bastrop grant," have had the same under consideration, and submit the following report:

The claim of John R. Temple was not filed with the commissioners under the act of 1851, providing for the adjustment of private land claims in the Baron de Bastrop grant, on the ground, as he alleges in his memorial, that he believed his claim was confirmed with the Bonaventure claim, which it adjoins.

The committee find a regular chain of title from Morehouse to John R. Temple. The claimant and the persons under whom he holds have been in uninterrupted possession of a part of the lands since 1807, and the remainder since 1812 and 1814, and the same has been inhabited and cultivated from the dates, respectively, up to this time. Two affidavits, accompanying the papers, show that the lands have been inhabited and cultivated for more than twenty years.

Your committee are unanimously of the opinion that if this claim had been presented to the commissioners under the act of 1851, with the proofs now before the committee, such commissioners would have recommended this claim for confirmation.

The omission of the memorialist to present his claim to the commissioners ought not, in the opinion of the committee, defeat the rights of the claimant under the act of 1851; they therefore report a bill to confirm the memorialist in his title to six hundred and seventy arpents of land, being the tract which he holds by a regular chain of title from Morehouse, and upon which he now resides, and respectfully recommend the passage of the bill.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 4.

IN THE SENATE OF THE UNITED STATES.

JANUARY 4, 1858.—Ordered to be printed.

MR. BENJAMIN made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the memorial of Henry Volcker, praying a confirmation of his title to a tract of land in New Mexico, have had the same under consideration, and submit the following report:

On the 5th day of January, 1846, the land commissioners for the then republic of Texas issued the following certificate for 640 acres of land, as a "head right," to one Simon Prado, to wit:

"REPUBLIC OF TEXAS, *County of Bexar.* } 640 acres. No. 169, 2d class.

"This is to certify that Simon Prado has appeared before us, the board of land commissioners for the county aforesaid, and proved according to law that he arrived in this republic previous to the 1st of October, 1837; that he is a single man, and has resided in the same three years, and performed all the duties required of him as a citizen, and having never received a certificate for the quantity of land for which he applies, is entitled to six hundred and forty acres of land.

"Given under our hands at the city of San Antonio, this fifth day of January, A. D. 1846.

"DAVID MORGAN, *Chief Justice,*
"*and ex officio President Board Land Commissioners.*
"THOMAS WHITEHEAD,
"JAS. B. LEE,
"*Associate Commissioners.*

"Attest: THOS. H. O. S. ADDOCKS,
"*Clerk County Court and ex officio*
"*Clerk Board Land Commissioners.*"

The said Simon Prado, by deed dated January 5, 1846, assigned all his right and title of the said certificate, No. 169, to one George Voss, of the county of Bexar and republic of Texas. The said Voss, by deed dated January 6, 1846, assigned all his right and title to the said certificate to one Arnold Henckel; and said Henckel, by deed

dated November 10, 1846, assigned all his right in and to the said certificate to one A. W. Schumann, who, by deed dated January 14, 1851, conveyed all his right and title in and to the said certificate, No. 169, together with all the rights and privileges that had been acquired, or thereafter to be acquired, by virtue of the said certificate; all of which transfers and assignments appear, from duly certified copies of the conveyances, respectively, as above set forth.

The said certificate was located upon the public lands of the State of Texas, and surveyed on the 22d day of July, 1850, as appears from a duly certified copy of the original survey, which is in the following words and figures, to wit:

STATE OF TEXAS, } Survey No. 38.
District of Bexar. }

Field-notes of a survey of 640 *acres of land made for George H. Paschal, it being the land to which he is entitled by virtue of land certificate No.* 169, *second class, issued by the board of land commissioners for Bexar county, to Simon Prado, on the* 5*th day of January, A. D.* 1846.

Said survey is No. 38, in section No. 15, situated on the table-lands or plain between the Rio Grande and the Pecos river. Beginning at a mound of earth raised for the northwest corner of this survey, 25 miles and 900 varas east, and 209 miles and 1,625 varas north, from the southwest corner of survey No. 1, made by Robert B. Hays, at the crossing of the Rio Grande at El Paso, from which another mound of earth bears east 10 varas; thence east 1,255 varas, entered the valley of the Salt Lake, known as "La Salina," 1,900 varas, to a mound of earth on the bank of said lake, raised for the northeast corner of this survey, from which another mound of earth bears south 10 varas; thence south 1,900 varas, crossing the eastern projection of said valley to a mound of earth raised for the southeast corner of this survey, from which another mound of earth bears north 10 varas; thence west 1,900 varas, to a mound of earth raised for the southwest corner of this survey; thence north 1,900 varas, to the place of beginning, so as to cover and include said Salt Lake. Surveyed July 22, 1850.

Bearings marked. No timber near.

BERNARDO McGUIRE,
TENAS NASH,
Chain Carriers.

I, Joel L. Ankrim, deputy surveyor for Bexar district, do hereby certify that the survey designated by the foregoing plat and field-notes was made according to law, and that the limits, boundaries, and corners of the same, together with the marks, natural and artificial, are truly described therein.

JOEL L. ANKRIM,
Deputy Surveyor, Bexar District.

I, I. S. McDonald, district surveyor for Bexar district, do hereby certify that I have examined the foregoing plat and field-notes, and

find them correct, and that they are recorded in my office, in book A, No. 5, page 367.

I. S. McDONALD,
District Surveyor, Bexar District.

SAN ANTONIO, *November* 16, 1850.

By an act of Congress of the republic of Texas, approved December 19, 1836, the western boundary of Texas was declared to extend to the Rio Grand river. By a map prepared under the direction of the War Office, from the most reliable authorities, in 1844, the Rio Grande, also, is laid down as the western boundary of Texas. After the annexation of Texas to the United States, this government recognized the boundaries of Texas, as defined by the said act of Congress of the republic of Texas, approved December 19, 1836. So that, at the date of the certificate from the board of commissioners to a period beyond the time of the location and survey by the proper officer, this land, covered by the said location and survey, was within the territory belonging to Texas, and was subject to location and settlement under authority from said State. We find, then, that under a certificate of location, issued by the proper authorities, a location and survey had been made upon the public lands of Texas, and that the said Simon Prado, or those claiming under him, only required the patent, to which he was legally entitled, to give a complete title to such tract of land. This patent the State of Texas would have been bound, in good faith, to have issued, and would have done so, undoubtedly, but for the short period elapsing between the survey and the passage of the act of Congress, approved September 9, 1850, by virtue of which that part of the territory of Texas, in which this tract of land was situate, was relinquished to the United States.

That this government is bound by law and good faith to confirm such inchoate titles in a territory acquired from another power, which such power, under the laws, usuages, and customs thereof, would have confirmed had such territory continued in their possession, is a question so well settled, both by the laws of nations and the decisions of the Supreme Court of the United States, (see 4 Peters, 512; 7 Peters, 87, and 10 Peters, 330,) that your committee do not deem it necessary to discuss the question.

The government of the United States, by virtue of said act, approved September 9, 1850, having become possessed of the territory in which the tract of land is situate, is therefore bound to confirm the title of the petitioner to the same extent as the State of Texas would have done had she continued in possession thereof.

The committee have therefore directed me to report a bill confirming the title, so far as the United States is concerned, and saving the rights of any third parties, and respectfully recommend its passage.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 5.

IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1858.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Bill S. 29.]

The Committee on Foreign Relations, to whom were referred the petitions of William K. Jennings and Aphia Jennings, Henry A. Wise, Ann Robinson, Edward Rudd, Mary Martin, and Benjamin Hodges, severally asking compensation for slaves taken and carried away by the British during the war of 1812, *out of the fund provided for under the first article of the treaty of Ghent, having had the same under consideration, respectfully report:*

That, from the testimony accompanying the petition of William K. Jennings and Aphia Jennings, it appears that, some time during the late war with Great Britain, while the enemy's fleet was lying in the Chesapeake bay, a negro man, Sam, aged about twenty-one years, the property of William Bean, the father of the petitioner, Aphia Jennings, and a negro woman, Easter, the property of Sarah Almond, escaped from the possession of their said owners, in the county of Elizabeth city, in the State of Virginia, and were carried off by the said fleet, and were never afterwards recovered. That the said Sarah Almond was the sister of said William Bean, and died intestate and without issue in his lifetime, leaving him her only heir at law. That the said William Bean has since died, leaving his daughter, Aphia Jennings, his only heir at law; and, further, that the belief that the fund provided for such cases had all been exhausted, has hitherto prevented an application for relief in this case.

In the case of Henry A. Wise, it is shown by the evidence filed that, in the fall of 1814, a negro man, Nelson, aged about nineteen years, previously allotted to the petitioner in the division of his father's estate, ran away to the British fleet, then lying near Tangier island, in the Chesapeake bay, and was carried away on board of the Dragon, 74, and in the latter part of January, 1815, landed on Cumberland island, on the southeastern coast of Georgia, placed in one of

the colored regiments, and never returned to his owner. As a reason for the delay in presenting this claim, the petitioner states that he was but eight years of age at the time of the escape of said slave; that his first guardian, John Cropper, died in the year 1821, before any distribution of pay for deported slaves was made by the commissioners under the treaty of Ghent; and that his second guardian, John Custis, was not informed of the loss of said slave until it was too late to have it acted upon by the commissioners.

In the case of Ann Robinson, it is shown by the evidence that on the day of the memorable action at Hampton, Virginia, in June, 1813, a negro man, Hampton, the property of the petitioner's husband, Henry Robinson, was forcibly taken from the possession of said Henry Robinson, in the county of Elizabeth city, Virginia, and carried on board of the British ships then lying in Hampton roads, and has never been returned. That, under the will of her said husband, Henry Robinson, (a copy of which is filed with the petition,) she is entitled, as residuary legatee, to whatever compensation may be allowed for said slave. And the petitioner further states that she was not aware until recently that any provision had ever been made for the payment of such claims.

In the case of Edward Rudd, the testimony shows that the petitioner is the son and heir of Edward Rudd, deceased, late of Elizabeth city county, Virginia. That some time during the late war with Great Britain, while the enemy's ships were lying in Hampton roads, six slaves—a negro man, Stepney, a negro woman, Crinner, and four children—were taken from the possession of the petitioner's father and carried off by the British, and have never been returned.

In the case of Mary Martin, it appears from the testimony that in the year 1813, during the late war with Great Britain, a negro man named Ned, the property of her former husband, Robert Lindsay, was captured by the enemy and carried away from the possession of his owner, then residing in Charleston, South Carolina, and never afterwards recovered. And in the case of Benjamin Hodges, it appears that the negro man Phil, belonging to the husband of the petitioner, was taken off by the British army on its return from Washington city to the fleet then lying in the Patuxent; and that the owner of said slave has never regained him.

It appears from Ex. Doc. No. 122, accompanying a letter from the President of the United States to the House of Representatives, dated March 8, 1826, that the average value of the slaves taken and carried away by the British from the State of Virginia, as agreed upon and fixed by the commission appointed under the award of the emperor of Russia, was $280 each, and those taken from the State of South Carolina at $390 each. It further appears, from a certificate of the Register of the Treasury, dated February 26, 1852, "that the balance unpaid of the fund received from Great Britain under the first article of the treaty of Ghent, amounts to $4,112 89," and upon recent inquiry at the Treasury Department, the committee have ascertained that that amount still remains unexpended.

Balance in the treasury of the fund received from Great Britain as

indemnity for slaves taken and carried away by the British in the war of 1812, per Register's certificate		$4,112 89
Of which this bill provides the following payments, viz:		
To William K. Jennings and wife, for four slaves, at $280	$1,120	
To Henry A. Wise, for one slave	280	
To Ann Robinson, for one slave	280	
To Edward Rudd, for six slaves, at $280	1,680	
To Robert Lindsay's representatives, for one slave	390	
		3,750 00
Leaving balance of the fund still remaining		362 89

From two several letters emanating from the Department of State, one dated February 24, 1852, and the other June 26, 1854, it appears that none of the above named petitioners have ever received any compensation for the slaves taken and carried away as above stated.

Your committee report a bill in conformity with the above state of the case, and recommend its passage.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 6.

IN THE SENATE OF THE UNITED STATES.

JANUARY 11, 1858.—Ordered to be printed.

Mr. BROWN made the following

REPORT.

[To accompany Bill S. 52.]

The Committee on Indian Affairs, to whom was referred the petition of William B. Trotter, praying indemnity for losses sustained by him in the year 1831 *in executing a contract for supplying a party of Choctaw Indians with provisions, while emigrating under the direction of the United States government, have had the same under consideration, and ask leave to report:*

That the United States obliged itself by a treaty with the Choctaw Indians, in 1830, to remove the Choctaw people from the lands which they then occupied in the State of Mississippi to other lands which had been set apart for them in the west. In pursuance of this obligation the government, through its agent, George S. Gaines, esq., contracted with the petitioner to subsist a party of *thirteen hundred and thirty-two* Indians while they should be on their way from the rendezvous to Pearl river, at the rate of six cents per ration. The party set out on October 26, and reached its destination on November 12, 1831. It is shown by the official certificate of the assistant emigrating agent, and by the vouchers filed, that the petitioner executed his contract according to its stipulations. The certificate is in these words: "I do certify, on honor, the above rations (23,976) were issued at *six* cents per ration, and I believe must have cost the contractor TWENTY-SIX cents."

The petitioner complains that he was grossly misled by representations made to him as to the quantity and price of provisions in the country through which he was to pass, and of the truth of this declaration your committee entertain no doubt. It is incredible that any man should agree to sell an article at six cents which was to cost him twenty-six cents.

Petitioner sets forth that he lost a large number of cattle turned out of a pen, where he had them collected, by the Indians, while in charge of the United States agent. For this he makes a charge against the government, on the ground that the Indians, being under the control of the United States officers, and in no way responsible to

him or any one else except the government officers, the government is accountable for their trespasses. This item your committee have totally disallowed.

The petitioner also claims interest, and this your committee likewise disallows.

As regards the first item in the account, your committee do not thing it amounts to a legal claim against the United States. But in cases where a party has faithfully performed a contract at a heavy personal sacrifice, it seems equitable and just that the government should bear some part of the loss, and this especially when the contract has been entered into under a manifest misapprehension as to the cost of its execution. A just man would not insist on a rigid fulfilment of such a contract—a just government ought not. Believing that the equities of the case are very clearly on the side of the petitioner, and that the government ought to do in this case what it has repeatedly done in cases of like hardship, your committee report a bill.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 7.

IN THE SENATE OF THE UNITED STATES.

JANUARY 13, 1858.—Ordered to be printed.

Mr. DAVIS made the following

REPORT.

[To accompany Bill S. 59.]

The Committee on Military Affairs, to whom were referred the petitions of Lieutenant James G. Benton, Brevet Majors E. B. Babbit and James Longstreet, of the United States army, having had them under consideration, report:

It appears that while these officers were stationed at San Antonio, Texas, in July, 1850, application was made to them, respectively, for ordnance stores, quartermaster's stores, and subsistence stores, by Parker H. French, the chief of a body of emigrants, on their journey to California.

The said French bore and exhibited to the petitioners what purported to be a letter of credit from Howland & Aspinwall, of New York, and he possessed the confidence of numerous citizens and merchants of Texas, to some of whom he was personally known. He was the acknowledged chief of an emigrating party, and was, to all appearances, a reliable and responsible man.

By authority of the joint resolution of Congress, approved March 2, 1849, officers in these departments are allowed to sell to persons emigrating to California such stores as the state of the public supplies will permit, and, with the concurrence of Brevet Major General Brooke, they sold to the said French as follows: ordnance stores, $1,021 04; quartermaster's stores, $519 93½; subsistence stores, $448 98; for which said French gave them separate drafts upon Howland & Aspinwall, of New York, which drafts, having been forwarded for collection, were protested for non-acceptance. It was *then* discovered that the letter of credit exhibited by French was a forgery, and all his representations were false. Several of the best merchants of San Antonio were at the same time and in the same manner imposed upon for large amounts of money, &c., and the impostor has fled beyond the reach of law. It is apparent that these petitioners, in all these transactions, exercised due diligence, acted under the instruction of

their commanding general, and that the money was lost without any fault of theirs. The committee, while they think these officers may have erred in taking anything but money in exchange for these government stores, yet they are satisfied that they acted in good faith towards the United States, and therefore recommend a bill for their relief, authorizing and directing the proper accounting officers of the treasury to credit their accounts the several amounts of which they were respectively defrauded.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 8.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1858.—Ordered to be printed.

Mr. FOOT made the following

REPORT.

[To accompany Bill S. 61.]

The Committee on Foreign Relations, to whom was referred the petition of Frederick A. Beelen, secretary of the United States legation to Chili, praying to be allowed the difference between his present salary, $1,500 *per annum, and* $2,000 *per annum, from July* 1, 1855, *to January* 1, 1857, *have had the same under consideration, and now report:*

That, having carefully examined the report heretofore made in this case by this committee, in connexion with the facts set forth in the accompanying papers, and concurring fully in the views presented in that report, hereby adopt the same, and report back the bill for the relief of the petitioner which accompanied that report, with a recommendation that it be passed.

IN THE SENATE, FEBRUARY 28, 1857.

The Committee on Foreign Relations, to whom was referred the petition of Frederick A. Beelen, secretary of the United States legation to Chili, praying to be allowed the difference between his present salary, $1,500 *per annum, and* $2,000 *per annum, from July* 1, 1855, *to January* 1, 1857, *have had the same under consideration, and now report:*

It appears from the petition, that in August, 1854, Mr. Beelen was appointed secretary to the legation of the United States in Chili, with a salary of $2,000 per annum. That he repaired to his post at once, and continued in the performance of its duties up to January 1, 1857. That some time in September, 1855, he received a communication from the Department of State, informing him that, under the construction given by the Attorney General to the act of March 1, 1855, "To remodel the diplomatic and consular systems of the United States," his salary as secretary of legation at Santiago would be only at the rate of $1,500 per annum from the 1st of July of that year. That the law reducing his salary thus had the effect of an *ex post facto* law upon him. That the lowest cost of reaching his post from the United

States is $500, and the same amount paid in returning home makes a sum equal to two-thirds of the salary for a whole year. That he is the only officer in the diplomatic service of the government whose salary was reduced by the act above named, and prays that he may be allowed the difference between $1,500 and $2,000 per annum, the amount of salary attached to his office when he accepted it, from July 1, 1855, when the act referred to went into effect, to January 1, 1857.

The statements of the petition are fully sustained by a letter from the Department of State, dated February 23, 1857, in which the Secretary adds: "That the reduction of Mr. Beelen's salary from $2,000 to $1,500, whilst he was at a remote capital, and in the actual discharge of his official duties, has always been regarded by this department as a case of peculiar hardship, which was aggravated by the fact that it was not in the power of the Secretary of State to inform Mr. Beelen of the construction placed by the Attorney General upon the law affecting his salary until after the law was in actual operation, of which Mr. Beelen could not, therefore, be aware, until from fifty to sixty days after the reduction of salary took place."

The committee are of opinion that, under the peculiar circumstances of this case, the relief asked for is reasonable and should be allowed. They therefore report a bill in his favor, and recommend its passage.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 9.

IN THE SENATE OF THE UNITED STATES.

JANUARY 18, 1858.—Ordered to be printed.

Mr. JONES made the following

REPORT.

[To accompany Bill S. 35.]

The Committee on Pensions, to whom was referred the petition of Michael Kinney, praying to be allowed a pension, beg leave to make the following report:

It appears that the petitioner, Michael Kinney, enlisted at Boston, July 6, 1849, and was honorably discharged July 6, 1854, at Fort Bliss, Texas, and was a private in company I, 8th regiment United States army. Subsequent to his discharge we find the following remarks on a return from Fort Clark, Texas, for the quarter ending September 30, 1854, signed by Basil Norris, assistant surgeon of the United States army, now on file in the surgeon general's office: "On the first of August I amputated the thigh of a teamster for gunshot wound through the knee joint; the patient was nursed by our attendants, and recovered with a good stump." It also appears that the petitioner was regularly employed in the quartermaster's department, and that while engaged in unloading a wagon, he received the wound above referred to. There is in evidence before your committee that said Michael Kinney was a man of unexceptionably good character during all the time he was connected with the public service. Your committee, therefore, deem the petitioner's case one worthy of the favorable consideration of Congress, and report the accompanying bill.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 10.

IN THE SENATE OF THE UNITED STATES.

JANUARY 19, 1858.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany Bill S. 10.]

The Committee on Commerce, to whom was referred "a bill repealing all laws, or parts of laws, allowing bounties to vessels employed in the Bank or other cod fisheries," and a "resolution of the legislature of the State of Maine in relation to the bounty on cod fisheries," report:

That, after a careful and elaborate examination of the whole subject of fishing bounties and allowances, the committee has been irresistibly led to the conclusion that they originated in the fallacious, but now almost universally exploded, theory of refunding to the manufacturer, on establishing the fact of re-exportation, the amount of duties paid on the raw material entering into the product of his industry and skill. That this view of the origin and object of these gratuities, whether granted in the shape of drawbacks, allowances, or bounties, according to the phraseology of the law authorizing them, has not only been adopted by the different committees of Congress to whom the subject has at different times been referred, but has been demonstrated in their reports by an array of facts and reasonings, and a recapitulation of the acts bearing upon it, that can scarcely be resisted by any disinterested and unbiassed mind; that the report made to this body April 10, 1840, (Sen. Doc. No. 113, 29th Cong., 1st sess.,) by Hon. T. H. Benton, covers the whole subject and its history from the commencement of the federal government to the date of said report, and leaves nothing for your committee to add further than to state that the subsequent and current history of our cod fisheries illustrates the arguments and strengthens the conclusions of that masterly report, and shows that the bounties, (in the language of the Secretary of the Treasury in January, 1857,) "instead of furnishing encouragement for seamen, mainly encourage the commission of multiplied perjuries, and tend to the demoralization of a large class of the community."

Whatever diversity of opinion may exist as to the origin and object of these bounties, the committee can find no good and sufficient reason for continuing them.

The cod fisheries do not need the bounty, as is shown by an appended tabular statement of the capital invested, tonnage and men employed, and value of fish taken, &c., &c., compiled from official returns of the industry of Massachusetts for the year ending June 1, 1855, to which the committee add the per centum of gross proceeds. (A.)

If they do need it, it is inexpedient to grant it, because the mackerel, whale, and other fisheries, our merchant and military marine, certainly afford ample means for training seamen without the aid of bounty. And, if both expedient and necessary to sustain the cod fisheries, it is unjust and unconstitutional to levy contributions on all other kinds of labor for their support.

In elucidation of the origin, objects and effects of the fishing bounties, the committee append a tabular statement of the vessels, tonnage, crews and bounties of the fisheries, and of the salt duties, (B ;) a synopsis of all the laws granting the drawbacks, allowances or bounty, (C,) and the letters of the present and former Secretary of the Treasury. (D, E.)

In conclusion, the committee recommend an amendment of the bill by filling the blanks so as to make it take effect on the last day of December, 1859, and that the bill be passed.

A.

Synopsis of vessels and tonnage, men employed, capital invested, fish taken, and gross proceeds of cod and makerel fisheries of Massachusetts, (extracted from Industry of Massachusetts,) for the year ending June 1, 1855.

Names of ports.	Page of book.	Number of vessels employed.	Tonnage.	Number of men employed.	Amount of capital invested.	Value of mackerel.	Value of cod.	Value of oil.	Aggregate value.	Per ct. of gross earnings on capital.
Barnstable	2	17	1,300	160	$38,500	$4,400	$29,000	.....	$33,400	87
Brewster	3	3	210	30	4,000	10,000	.....	$50	10,050	2.50
Chatham	5	27	1,880	230	30,000	24,000	45,000	.....	69,000	2.30
Dennis	16	48	2,130	500	96,000	77,252	42,000	.....	119,252	1.24
Eartham	7	3	168	30	6,000	7,500	800	.....	8,300	1.38
Hanride	10	28	2,040	280	86,000	45,600	17,400	.....	63,000	73
Provincetown	13	97	8,495	873	388,000	60,000	246,875	400	307,275	80
Wellfleet	17	80	5,935	824	220,175	129,000	27,716	.....	156,716	71
Yarmouth	18	15	1,035	170	33,681	9,082	9,350	.....	18,432	55
Beverley	116	48	3,680	384	152,000	1,500	108,600	50	110,150	72
Gloucester	126	282	19,374	2,820	989,250	388,809	293,850	1,020	683,679	70
Manchester	144	10	549	71	16,400	.....	16,325	.....	16,325	99
Marblehead	145	45	3,805	280	138,050	.....	163,764	7,217	170,981	1.24
Nahant	149	4	150	30	4,000	4,000	6,000	300	10,300	2.58
Newburyport	153	56	3,857	665	138,000	86,000	30,000	9,000	125,000	91
Rockport	157	65	1,895	357	46,250	33,182	53,000	7,392	93,574	2.02
Swampscot	167	39	1,000	226	689,150	50,000	196,560	5,300	251,860	37
Duxbury	417	11	447	64	11,800	14,960	6,811	.....	21,771	18
Hingham	426	20	1,493	264	59,785	44,364	4,500	.....	48,864	82
Kingston	430	10	1,049	86	40,000	.....	22,700	.....	22,700	57
Plymouth	441	53	3,778	412	195,000	.....	90,606	5,300	95,906	49
Boston	458	89	7,100	1,000	260,000	287,000	.....	30,000	317,000	1.21
Total	.....	1,050	71,372	9,756	3,638,041	1,276,649	1,410,857	66,029	2,753,535	*

* Average nearly 76 per cent.

NOTE.—These proceeds do not include the bounty, or, it seems, the value of the fish sold fresh, which is not reported except at Rockport, where it amounted to $15,750.
The same report gives 473,743 bushels of salt used in the fisheries, the duty on which, at 2½ cents, would have been $11,843 57 less than one-third of one per cent. on capital invested.

B.

Condensed statement exhibiting the number of vessels, men, and tonnage employed in the whale, cod, and mackerel fisheries; allowances paid to fishing vessels; bounty on salted provisions and pickled fish; and duties on salt consumed annually from the commencement of the government to the 30th of June, 1857; with the number and cost of maintenance of revenue cutters stationed at the fishing districts during the last eight years.

Years.	Whale fishery.			Cod fishery.			Mackeral fishery.			Allowances paid to fishing vessels.	Bounty on salted provisions and pickled fish.	Duties on salt consumed.	No. of vessels.	Cost of maintenance.
	No. of vessels.	Tonnage.	Crew, men.	No. of vessels.	Tonnage.	Crew, men.	No. of vessels.	Tonnage.	Crew, men.					
	Estimated.		*Estimated.*	*Estimated.*		*Estimated.*	*Estimated.*		*Estimated.*					
1791											$29,683			
1792											44,772			
1793										$72,988	16,731			
1794										93,765	13,767			
1795										66,293	14,855			
1796										76,889	16,999			
1797										80,475	12,309			
1798										94,688	19,290			
1799										128,607	20,769			
1800										87,855	18,325			
1801										74,520	28,586	$576,361		
1802										104,448	29,701	648,847		
1803										117,173	34,790	552,130		
1048										145,988	46,923	487,848		
1805										152,927	37,746	563,291		
1806										162,190	37,134	686,890		
1807										161,253	27,414	515,920		
1808										143,716	17,241			
1809										47,165	2,494			
1810										3,406	508			
1811											784			
1812														
1813														
1814												75,822		
1815	4	1,230	98	530	26,510	3,711				1,811		853,637		
1816	4	1,168	93	757	37,879	5,303				84,735	584	984,694		
1817	17	5,224	317	1,078	53,990	7,558				119,915	4,427	461,842		
1818	55	16,549	1,393	1,170	58,552	8,190				148,918	5,672	550,479		
1819	108	32,387	2,590	1,300	65,045	9,105				161,622	5,477	595,172		
1820	121	36,444	2,915	1,216	60,843	8,517				197,833	11,169	803,914		
1821	93	28,005	2,390	1,026	51,351	7,189				170,054	11,108	694,369		

1832	160	48,083	3,846	1,168	58,405	8,176	.....	.....	.....	149,897	10,158	707,665	.....	.....
1833	135	40,504	3,240	1,340	67,041	9,385	.....	.....	.....	176,711	10,939	889,948	.....	.....
1834	111	33,346	2,667	1,364	68,239	9,552	.....	.....	.....	197,179	10,089	618,410	.....	.....
1835	118	35,379	2,830	1,412	70,696	9,856	.....	.....	.....	198,728	10,561	707,475	.....	.....
1836	140	41,984	3,358	1,270	63,535	8,894	.....	.....	.....	215,860	13,640	690,923	.....	.....
1837	153	45,992	3,679	1,474	73,710	10,318	.....	.....	.....	206,185	8,879	851,031	.....	.....
1838	188	56,621	4,529	1,498	74,946	10,491	.....	.....	.....	239,147	9,096	785,030	.....	.....
1839	191	57,284	4,583	1,956	97,889	13,704	.....	.....	.....	261,071	9,008	1,180,931	.....	.....
1830	132	39,705	3,176	1,160	58,041	8,125	599	35,973	4,772	197,641	9,073	1,054,436	.....	.....
1831	976	89,798	6,623	1,141	57,239	8,012	770	46,211	6,160	199,631	13,400	895,330	.....	.....
1832	244	73,246	5,659	1,034	51,725	7,240	790	47,428	6,320	219,747	14,392	1,002,395	.....	.....
1833	339	101,637	8,130	1,170	58,569	8,198	819	48,725	6,496	245,183	13,284	677,810	.....	.....
1834	361	108,423	8,673	1,049	52,473	7,345	1,018	61,082	8,144	218,220	10,859	555,404	.....	.....
1835	361	108,423	8,673	1,049	52,473	7,345	1,018	61,082	8,144	223,787	9,537	487,532	.....	.....
1836	487	146,254	11,700	1,168	58,413	8,177	774	46,424	6,192	213,090	6,732	433,479	.....	.....
1837	423	127,137	10,170	1,511	75,055	10,507	780	46,811	6,240	250,180	7,360	538,202	.....	.....
1838	416	124,856	9,988	1,279	63,974	8,955	944	56,649	7,552	314,150	5,474	555,349	.....	.....
1839	440	132,194	10,571	1,305	93,268	9,136	599	35,984	4,792	319,855	4,744	473,672	.....	.....
1840	456	136,927	10,954	1,358	67,996	9,508	471	28,269	3,758	301,631	4,254	569,384	.....	.....
1841	525	157,405	12,592	1,211	60,656	8,477	188	11,321	1,504	355,141	4,760	468,907	.....	.....
1842	506	151,990	11,159	988	49,940	6,991	268	16,097	2,144	235,613	5,699	388,965	.....	.....
1843	508	152,517	12,201	1,098	54,901	7,686	196	11,776	1,568	169,934	3,315	433,403	.....	.....
1844	562	168,614	13,488	1,562	78,179	10,943	269	16,171	2,152	249,075	6,664	654,881	.....	.....
1845	636	190,903	15,272	1,396	69,826	9,774	357	21,413	2,856	289,839	4,174	678,069	.....	.....
1846	625	187,420	14,993	1,450	72,516	10,151	608	36,463	4,864	274,944	5,541	509,244	.....	.....
1847	646	193,859	15,508	1,402	70,178	9,823	594	31,451	4,192	276,427	6,488	292,892	.....	.....
1848	645	192,613	15,408	1,653	82,652	11,571	736	43,559	5,808	243,434	748	205,531	.....	.....
1849	600	180,187	14,415	1,477	73,882	10,342	716	42,942	5,728	287,604	68	284,906	.....	.....
1850	487	146,017	11,608	1,712	85,646	11,990	968	58,112	7,744	286,798	.....	245,503	*4	16,969
1851	605	181,645	14,531	1,749	87,476	12,245	842	50,539	6,736	328,267	.....	205,060	4	20,913
1852	646	193,798	15,502	2,053	102,659	14,371	1,209	72,546	9,672	304,569	.....	220,478	4	30,969
1853	644	193,203	15,456	1,999	99,990	13,997	997	59,850	7,976	393,199	.....	208,315	4	23,423
1854	606	181,901	14,552	2,043	102,194	14,306	584	35,041	4,672	374,286	.....	258,195	4	34,434
1855	623	186,818	14,947	2,058	102,928	14,408	360	21,625	2,850	346,196	.....	388,517	4	49,095
1856	631	189,461	15,156	1,916	95,816	13,413	498	29,886	3,984	134,659	.....	390,856	4	39,106
1857	816	195,772	19,584	1,935	104,573	13,545	525	28,328	4,200	601,453	.....	398,273	4	54,179
	15,844	4,705,952	379,077	59,498	2,983,629	416,561	18,410	1,101,758	147,250	12,128,532	*p* 728,756	28,696,847	.....	969,088

* Stationed at Passamaquoddy, Portland, Boston, and New London.

p 1791 to 1811, inclusive, bounty on salted provisions and pickled fish—total $470,771
1816 to 1849, inclusive, bounty on pickled fish only 257,985

728,756

Statement of the amount of allowances paid to each State.

Maine	$3,762,500
New Hampshire	552,693
Massachusetts	7,532,796
Connecticut	182,853
Rhode Island	78,890
New York	18,319
Virginia	479
Total	12,128,532

Statement exhibiting the rate of duty on salt consumed in the United States for the following years:

Nine months to June 30, 1843	8 per cent. per bushel	Specific.
Year ending June 30, 1844	8 do	Do.
1845	8 do	Do.
1846	8 do	Do.
Five months to Nov. 30, 1846, 1847	8 do	Do.
Seven months to June 30, 1847	2.59 do	Ad valorem.
1848	2.30 do	Do.
1849	2.46 do	Do.
1850	2.19 do	Do.
1851	2.40 do	Do.
1852	2.18 do	Do.
1853	2.07 do	Do.
1854	2.55 do	Do.
1855	2.63 do	Do.
1856	2.55 do	Do.
1857	2.33 do	Do.

Number of vessels, men, and tonnage in the cod fisheries, 1858.

States.	Vessels.	Tonnage.	Crew.
Rhode Island	1	76	7
New Hampshire	25	1,943	175
Connecticut	134	6,717	938
Massachusetts	972	48,549	6,804
Maine	953	47,989	6,692
Total	2,088	104,574	14,616

NOTE.—The returns of tonnage in the mackerel fisheries were not required to be made separate from the cod fishery prior to 1830.

F. BIGGER, *Register.*

TREASURY DEPARTMENT,
Register's Office, January 16, 1858.

C.

Brief synopsis of laws relating to fishing bounties.

The act of Congress of 4th July, 1789, the first laying a duty on goods, wares, and merchandise imported into the United States imposed on salt the duty of six cents per bushel. The fourth section gave a bounty of five cents for every quintal of dried fish, every barrel of pickled fish, and salt provisions exported to foreign countries, in lieu of drawback of the duties on the importation of the salt employed and expended therein. Limited to seven years.

The act of 10th August, 1790, raised the duty to twelve cents per bushel, and the bounty in lieu of drawback to ten cents per quintal or barrel. To continue till the debts of the United States were paid.

The act of 16th February, 1792, referring to the existing bounty on the export of dried fish, gave, "*in lieu of drawback of duties* on the salt used in preserving the same," a bounty on the tonnage of vessels employed in the Bank and other cod fisheries, during the season specified, under certain conditions.

This bounty was on vessels between five and twenty tons, $1 per ton; between twenty and thirty tons, $1 50; and above thirty tons, $2 50; provided that no vessel shall be allowed more than $170.

By the second section of the act of 2d May, 1792, the impost duty on salt was increased, by requiring each *fifty-six pounds* to be reckoned as a bushel. The solar salt, used in the fisheries, usually weighed from seventy to eighty pounds per measured bushel. To correspond with this enhancement of duty, the sixth section of the act added 20 per cent. to the fishing bounty. Limited to two years.

The act of 8th July, 1797, increased the duty on salt to 20 cents per bushel, and added 33⅓ per cent. to the fishing bounty. This increased duty on salt and bounty on fishing vessels were originally limited to two years, and to the end of the next session of Congress.

By act of 7th May, 1800, the duty and bounty were extended for ten years, with a proviso that the bounties should cease with the duties. The act of 3d March, 1807, repeals all laws imposing duty on imported salt, and repeals all bounties and drawbacks on fish and provisions. The act of 28th June, 1809, authorizes accounting officers to allow to collectors all payments made by them for fishing bounties to 31st December, 1807.

The 1st section of act of 29th July, 1813, imposed a duty of 20 cents per bushel on salt.

2d section provides bounty of 20 cents per pound on pickled fish exported.

5th section gives bounties on tonnage of vessels employed in Bank and other cod fisheries, under similar provisions as those of act of 1792, as follows:

On vessels from	5 to 20 tons	$1 60	per ton.
" "	20 to 30 "	2 40	"
"	above 30 "	4 00	"

Provided, that no vessel be allowed more than $272. By its terms this act was to remain in force only during the existing war with Great Britain. The act of 9th February, 1816, continued act of 1813 in force indefinitely.

Act of 3d March, 1819, increased fishing bounties as follows:

On vessels from	5 to 30 tons	$3 50	per ton,
"	above 30 "	4 00	"

And where the crew was ten men or more, $3 50 per ton for season of three and a half months, provided that no allowance shall exceed $360.

This was the first act where fishing bounty did not expressly depend on the duty on salt, by its terms.

D.

TREASURY DEPARTMENT,
January 6, 1858.

SIR: I have the honor to acknowledge your letter of the 5th instant, enclosing a bill repealing all laws or parts of laws allowing bounties to vessels employed in the Bank or other cod fisheries, and a resolution of the legislature of the State of Maine in relation to the bounty on cod fisheries. You request any information in this department concerning the measure, and also my own views respecting the same.

Allow me to refer you to a letter dated the 2d of January last, addressed to you by my predecessor, which embraces the results of an examination made here, and to the report of an agent appointed to examine into this subject in the districts where this fishery is carried on, appended to the annual report of my predecessor of 6th December, 1853, for the information you request.

It would seem that the grounds upon which the fishing bounty was given by law have ceased to exist. The amounts annually paid out of the treasury on account of this bounty now exceed the entire sums received for duties on salt imported and consumed for all purposes whatever.

In his report, before referred to, my predecessor recommended that the fishing bounty be repealed, and I concur in that recommendation.

The papers enclosed with your letter are herewith returned.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

Hon. C. C. CLAY, Jr.,
Chairman Committee on Commerce, Senate U. S.

E.

TREASURY DEPARTMENT,
January 2, 1858.

SIR: Agreeably to your request, I herewith enclose a synopsis of the legislation on the subject of bounty to vessels engaged in the cod fishery.

It is apparent, from the slightest glance at these provisions, that they were not intended to foster that pursuit, but simply to relieve that fishery from the burden imposed on it by the salt duty. In 1792, when this system commenced, all the salt used in this country was imported, and was subject to duty. Vast quantities of this salt were then employed in curing codfish to be dried for exportation. It was a leading pursuit on the eastern Atlantic coast, and furnished the country with one of its principal staples for foreign commerce. The guards required by the drawback laws would subject the cod fishery to impracticable details to enable it to reclaim the duty on the salt ne-

cessarily consumed. The only just and effectual mode which could be devised for indemnifying the fishery against this burden of duty was to give a bounty on the tonnage employed, graduated according to the quantity of salt consumed by each class of vessels.

The only feature in the bounty laws which can be regarded as intended to afford the slightest encouragement to the cod fishery is that which provides that no bounty shall be allowed to any vessel unless the crew are compensated according to the quantity of fish caught by each man. This provision was not, probably, intended as an encouragement to the fishery, but to promote rivalry and enterprise among the crew; that the mere fact that the vessel had a crew on board should not be sufficient, unless they diligently followed the fishery, which this condition was well calculated to effect.

It will be seen that the original bounty law of 1792 was repealed with the salt duty in 1807. When the duty on salt was reimposed in 1813, in consequence of the then existing war, the former bounty laws were re-enacted with similar conditions.

When the bounties were increased to their present rate per ton on fishing vessels, by act of 3d March, 1819, the duty on salt, under the act of 27th April, 1816, was 20 cents for every 56 pounds.

The present duty, under the act of 1846, is 20 per cent ad valorem, which, on the importation of 15,405,864 bushels last year, valued at $1,991,065 by the custom-house books, makes the duty within a fraction of 2.57 cents per bushel.

It is to be understood that since 1792, the date of the original law, a revolution has occurred in the mode and object of the fisheries. There was then no mackerel fishery; it is now more extensive and important than the cod fishery. Many of the vessels under cod fishing licences are employed in catching fish, not for dry-curing under the bounty laws, but for sale in a fresh condition, being preserved in ice for consumption in that state in the cities, as well as throughout the interior of the country, to which it is carried by means of the railroads. The great change which has taken place of late years in the manner and purpose of the fisheries, has led, not to the encouragement of the cod fishery under the bounty laws, but to the commission of perjuries for the purpose of obtaining bounty under those laws. Hundreds of vessels, on board of which no fish were caught for dry-curing, which is essential to entitle them to bounty, have claimed and been allowed upon false statements, as has been subsequently made apparent.

Representations of this abuse being made to this department, the existing laws and regulations were brought together into the circular of February 20, 1852, which was sent to the collectors for strict enforcement.

Immediately on the promulgation of this circular, a committee from the fishing interest at Gloucester, Massachusetts, one of the principal fishing districts of the country, appeared here, and represented that, should this circular be rigidly enforced, no bounties could be paid.

Among other objections to its provisions, they stated that the mode of carrying on the fisheries had essentially changed; that few or none of the fishermen at the present time were in fact compensated in the

mode required. It was also represented that in former times, when codfish alone possessed commercial value, all other fish which might happen to be caught were thrown overboard; but now, when halibut, and other fish caught on the same grounds with cod, are taken, they cannot be thrown away, as some of them are more valuable in the markets than cod, and it was a great hardship to refuse bounty to vessels which might happen to take such fish and to preserve them fresh for sale. This department was appealed to for relief. The records of 1851 and 1852 contain an extensive correspondence with collectors, urging such relaxation as might enable them to pay bounties to such vessels.

Having no power to repeal the conditions annexed by law to the allowance of bounties, this could not be done; but it appears that the bounties were claimed and paid upon formal proofs duly made up as required by the circular.

Many of the vessels to which bounties are paid upon proofs prepared in conformity with the regulations, beyond all doubt, are manned by crews compensated in a different mode from that required by law; and probably the fishery pursued is not exclusively for codfish for the purpose of dry-curing, as contemplated by all the provisions of the bounty laws. Under this state of things, an important question of expediency, as well as of morality, arises, since these laws, instead of furnishing encouragement for seamen, mainly encourage the commission of multiplied perjuries, and tend to the demoralization of a large class of the community.

Several indictments for perjury committed in making up these proofs have been tried within two or three years, which have generally resulted in acquittal, it being found in some sections of the country difficult, if not impossible, to convict for perjury on false custom-house oaths. Further facts and considerations on this subject may be found in my annual report on the finances of 6th December, 1853, and in the report of J. Ross Browne, esq., accompanying the same, to which I beg leave to respectfully refer you.

Very respectfully, your obedient servant,

JAMES GUTHRIE,
Secretary of the Treasury.

Hon. C. C. CLAY, Jr.,
Senate of the United States.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 11.

IN THE SENATE OF THE UNITED STATES.

JANUARY 10, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 67.]

The Committee of Claims, to whom was referred the memorial of Jonas P. Keller, report:

In 1849, as it appears from the memorial and papers in this case, the executive building at the corner of F and Seventeenth streets was occupied by various bureaus of the Treasury, War, and Interior Departments, but no legal provision existed for the superintendence and care of the building. Under these circumstances, the Secretaries of those departments authorized Mr. McPherson, a clerk in the War Department, to take charge of the building as acting superintendent, who immediately devolved the duty of the care and oversight of the daily police of the place upon the memorialist, who performed the service (as Mr. McPherson and others certify) until the act of 27th of February, 1851, which provided watchmen for the building, took effect.

From the appropriation made by that act Mr. Keller received a compensation for his services at the rate of $500 per annum, subsequently to 1st October, 1850, but no means were provided for paying for the service rendered between 1st April, 1849, when his duties commenced under the authority derived from the heads of the several departments, and the 1st October, 1850, and it is for this period that compensation is now claimed.

The act of 1850, (9 Stat., 542,) which prohibits the accounting officers from allowing to one individual the salaries of two different offices, expressly provides that "this prohibition shall not extend to the superintendents of the executive buildings."

Believing the claim, to the extent above indicated, to be just, the committee report the accompanying bill, and recommend its passage.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 12.

IN THE SENATE OF THE UNITED STATES.

JANUARY 19, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 68.]

The Committee of Claims, to whom was referred the memorial and accompanying papers of Elias Hall, have had the same under consideration and report:

That this case was examined very carefully by the Committee of Claims of the Senate of the last Congress, and a favorable report made by that committee. This committee concur in and adopt said report, except so far as relates to the sum of $40 80, claimed by the petitioner for expenses paid out by him for the United States, during the service in which he was employed. The items of this act the committee think must be considered as bound by the presentation and settlement of an account in his favor in 1818. The committee are willing to allow him pay for the horse alleged and proved to have been lost in consequence of hard usage in the service of the United States, in the emergency stated in the evidence, being satisfied that no compensation has heretofore been allowed him, and a sufficient reason being given by the claimant why the account or demand for the value of the horse was not included in, or presented in any of his accounts which have been settled by the government.

The committee, therefore, report a bill in favor of the claimant for the sum of $516 52, with interest from the 29th April, 1834, when it appears that the account and vouchers were properly presented for payment. The committee think that the highly meritorious, patriotic, and valuable services of the memorialist, rendered at a critical and important crisis, and at a great sacrifice of private interests, demand the allowance proposed in the bill.

IN THE SENATE OF THE UNITED STATES, *December* 23, 1857.

The Committee of Claims, to whom was referred the memorial of Elias Hall, report:

That, from a careful examination of the papers in this case, they are satisfied with the truth of the following statement of facts, viz:

The memorialist was a gunsmith, and in 1812 was doing a large

and profitable business in Middlebury, Vermont. In October of that year, a portion of the American army being stationed at Plattsburg, New York, Lieutenant Colonel Brearly was sent into Vermont to procure a quantity of pikes for the use of his regiment. After several unsuccessful efforts, he applied to Mr. Hall, who entered with great energy and patriotism into the service of supplying the army with the desired weapons. So highly pleased was Colonel Brearly with the skill and energy of character manifested by the memorialist that he prevailed upon him to repair to headquarters, "that the army might avail itself of the services of an armorer and artificer so completely qualified, in all respects, to execute every branch." And Colonel Brearly says he was satisfied, from personal knowledge and observation, that Mr. Hall's motives for entering the service were evidently more from a spirit of patriotism than any prospect of emolument.

On their arrival at headquarters he was introduced to General Dearborn "as just the man the public service required" to superintend the repair of small arms. At a subsequent interview, General Dearborn proposed to him to engage in the service in that capacity, which he agreed to do, at a compensation of $50 per month and rations, for "during the war." He was paid for his services at the rate stated, from that time until the 22d July, 1814. From this time until the close of the service, in consequence of some informalities, he failed to receive his pay. General Dearborn had left that place, and seems to have failed to officially report the arrangement with Mr. Hall, although General Bomford certifies that General Dearborn informed him of the fact, and promised to furnish the department with a certificate to that effect, which he seems to have failed to do.

The claim has been several times presented to the department, and although it seems to have always been regarded as just, they have not deemed themselves authorized by law to pay it.

General Talcott, in a letter dated June, 1853, after stating that no record of the contract can be found, says: "But desirous that meritorious services should not be overlooked nor neglected, I would recommend that you make out regular accounts, &c., and to make affidavit to its correctness." The account was accordingly stated and submitted to the Ordnance Department, and General Talcott, the head of that department, says in regard to it: "I consider [it] an equitable claim upon the government, but so much time has elapsed since it originated, and almost every one who could supply the information necessary to corroborate or sustain the claim having deceased, it has not been possible for him to present it in such a shape as to obtain payment."

The amount due for pay and subsistence is $421 52; and if interest were allowed, by way of damages for its detention, the amount would be $1,507 20.

Mr. Hall also presents a claim for sundry expenses incurred by him in the public service, which he specifies and verifies by oath, amounting to $40 50, and for a horse lost in consequence of urgent and extraordinary service performed immediately preceding the battle of Plattsburg, and in the preparation for that action, $95, making $135 50. The loss and value of the horse are sustained by other evidence.

The high character of the memorialist for truth and integrity, and for patriotic zeal and devotion to his country, is well attested by several of the most eminent citizens of his State, as well as by the officers of the army with whom he served.

The committee, therefore, concur with the head of the Ordnance Department, after a full examination of the facts, that this venerable patriot has a just and equitable claim upon the government; and as he has already completed his seventy-sixth year, if his last days are to be cheered by a manifestation of the justice and magnanimity of his country, immediate action is indispensable.

The statement of Mr. Hall contains so clear and graphic an account of his services, and of the operations of the troops and local militia in the defence of Plattsburg, that the committee append it hereto, and make it a part of this report.

In conclusion, the committee report a bill for the relief of Elias Hall, of Rutland, Vermont, and recommend its passage.

The whole amount of the original claim is $557, for which the bill provides payment, without interest.

MEMORIAL.

I, Elias Hall, of Rutland, Vermont, aged seventy-five years, depose, testify, and say: That by a verbal agreement made with Major General Dearborn, near Canada line, on the 17th day of November, A. D. 1812, I was to have fifty dollars per month and subsistence, which was fixed by the War Department afterwards at *three dollars per week*. (No. 4.) That it was agreed, and distinctly well understood, that the engagement and employment was for *during the war*, and to superintend the repairs of small arms on the northern frontier. Had not this been the case, I could not have been induced to abandon a good business, family, and property, principally in real estate, estimated at from ten to twelve thousand dollars, and with an extensive range of custom and business.

When about the 1st of November, 1812, (No. 3,) Lieutenant Colonel David Brearly, of the 15th regiment United States army, applied to me to make 600 pikes for the use of the army then in Plattsburg. He informed me that the case was very urgent. (No. 3.) That General Bloomfield, commanding at Plattsburg, three or four weeks previous, had ordered him across the lake to Burlington, to get the pikes made in five or six days, and as soon as obtained the army would move for Canada, and were *waiting for nothing else*. That he had remained at Burlington three or four weeks under the false pretences of those who *opposed the war* (No. 3) and got *none*. And I engaged to make them, (No. 1) with the understanding that from *seven* to *nine* thousand troops were to be idle and on expense until they were made, and winter near; and I used my utmost exertions to meet the wants of the army. (See Colonel Brearly's letter, No. 3.) Ex-Governor Slade, who was in a situation to know, said he thought I could not have slept over an hour in a night; but I think I might half an hour more. And after eleven or twelve days thus employed, Captain Charles G. Jones was sent

express from the army, saying it must march for Canada, and for me to finish those I had begun, and go to Burlington for pay. (No. 1.) I finished, as directed, and at 11 o'clock that night started and got to Burlington, 32 miles, before daylight. This job, thus completed, was the probable cause of my after employment. The quartermaster (Hatch) was gone to Plattsburg. I went there, and the troops were paraded for a march to Canada, and went November 14, 1812; and the quartermaster said he could not attend to paying me until the army and appendages were gone. In the course of that day, Colonel Brearly introduced me to General Dearborn at headquarters, as just the man the public service required. (No. 3.) And at once the general wished to know if I could be engaged to superintend the repairs of small arms. He expressly said it was not expected I should work, only superintend the business. (*Not master armorer.*)

It being a surprise on me, I wished time to consider, and was to see him again. The naval force sailed before noon, and at night the quartermaster, against my wishes, had me go aboard the steamboat Vermont to fit the pikes and poles together; and we came to anchor in Thurber's bay, near the fleet, one mile south of Canada line, and five east of the army.

The quartermaster had so ordered, and I was the first one landed about the break of day; and the first man I found was an *Old School Republican*, who furnished shop and tools, and we got all the pikes and poles together, 100; this was the 15th of November. The quartermaster came from camp during the day, and directed me to procure a team by night and get the pikes to the army. I got them within a mile and a half, and reported them to the officer of the day at camp. And just as I had finished supper, 10 or 11 o'clock at night, Captain C. G. Jones burst into the room and said, "Mother Dewey, I want a loaf of bread and some cheese in my harvy-sack in a minet," then turned to me and said, "I am going to make the first *splash* on Canada." On my questioning it, he requested me to step to the door, and there were six or eight hundred of the army a mile south of the line on the way to Canada; and by mistake they killed several of their own number, without *seeing an enemy*, and returned to camp the 16th. (See Brearly's and Pike's general pass, No. 2.)

On the 17th I obtained pay for making the pikes. And Colonel Z. M. Pike, of the 15th regiment, went with me from camp to General Dearborn's quarters, in the village of Champlain; at the time we entered the room, the general was sitting near the middle of the room, and officers in full dress surrounding it. What their business was I know not, but suppose they were *holding* a council of *war*, as all business was suspended and the army broke up the next day. Soon after we got in the room, as above stated, General Dearborn asked me if I had made up my mind to engage in the service. My answer was, that if I could have fifty dollars per month and a support for during the war, I should engage. And he, without hesitation, said I could or should have it. I knew no one present but the general and Colonel Pike, (killed at Little York, April 26, 1813.) And I never had any paper evidence of employment from General Dearborn. Whether or not the general would have given me any, had he not been engaged

as mentioned, I know not. The army went into winter quarters immdeiately after. General Dearborn said, at the time of making the agreement with me, that I must consider myself attached to the *ordnance department*, and that he would give Captain S. Thayer, of the ordnance department, then there, directions respecting me. And a few days after this, Captain Thayer, at Middleburg, on his way to Albany, told me he had received the general's directions, and as soon as he got to Albany would obey them ; and forty-four years have expired, and I have been unable to get a line from him ; my last to him was April 14, 1856. Failing to have any attention from Captain Thayer, I wrote to the commissary general of ordnance at Washington, June 14, 1813. (See Colonel Wadsworth's letter, No. 5, and mine to him, No. 6.) "He did not know whether the repairs of small arms belonged to his department or not." And this letter is all he ever wrote. I soon after wrote General Dearborn, on the Niagara frontier, without an answer. But Major Bomford wrote me that the general had sent him a certificate in my favor, and that it had been forwarded to me at Burlington. (No. 7.) But it was *never received by me*, and I so informed him. What induced Major Bomford to certify as to my employment and *pay*, unless he had the evidence he said was sent him, (No. 7,) I know not. But I got *eleven months* pay, on the terms agreed upon the 17th November, 1812, as stated in the copy of account and receipt. (No. 4.) The evidence of after payment up to the 23d of July, 1814, I think was burned with my house and buildings, September 24, 1843.

What I now claim is, to be paid, according to the agreement with General Dearborn, from the 23d of July, 1814, to the 15th of February, 1815. And as there never was any provision by law to pay me, while I have used various means to obtain payment ever since Captain Campbell, of ordnance, presented my claim to the accountant in 1817. (See his letter, No. 9.)

And I further testify and say, that I was ordered July 9, 1814, by the officer of ordnance to remove a part of the ordnance stores from Burlington to Plattsburg, (see Lieutenant MacKay's order, No. 8,) and hearing proper care was not taken of them, went there. General Macomb said Lieutenant Mackay had not reported himself for duty; and finding the fixed ammunition, muskets, rifles, pistols, cartridges, flints, fuses, matches, rockets, all thrown in together, as they were unloaded from sleighs the previous March from French mills, the loose powder in some places on the floor an inch deep. The dust, in making several plans in shape, or some other cause to me unknown, caused me to have sore eyes, and I got permission from General Macomb to go to Burlington, where my family resided, and see to the ordnance stores left there, and before my eyes got well the battle of Plattsburg took place. Freeman's meeting, in Vermont, is yearly, on the first Tuesday of September, which came on the sixth day. Not being a voter in Burlington, I went to Middlebury on the 5th, where I was one. And it was the general understanding by all that they might go where they could vote, as the political contest was doubtful. On the 7th I paid ninety-five dollars for a young and saleable horse. (No. 10.) On the 8th a man came after me from Burlington, (see

Hepburn's deposition, No. 10,) with the first intimation of the enemy's taking possession (on Freeman's meeting day) of the north bank of the Saranac, in Plattsburg. I lost not a minute in putting the said horse into a wagon, and at 2 o'clock p. m. started for Burlington, 32 miles distant, where I arrived about dark, (No. 10,) and reported myself to Colonel Fassett, the commanding officer. Plattsburg, 25 miles distant, *could then be seen on fire*, and I was up most of the night, seeing to whatever remained of the ordnance effects at Burlington, (No. 8.) The next day, the 9th, at 9 or 10 o'clock, (No. 10,) Giles T. Chittenden, a man well known by me, came with his horse upon the run, and said he came, by direction of the commanding officer, to see if I knew any means to get arms from Montpelier, as they had none for the volunteers and militia constantly arriving; that he (the commanding officer) had sent teams and an order that returned without any arms, for the reason that the Secretary of *War* had given orders, (No. 11,) that none should be delivered *except on the order of the commanding general of the district*, (the 9th,) and he thought there would not be time to get an order from General Macomb, and send it and teams to Montpelier, 40 miles, (No. 10,) as it was expected every minute the enemy would make an attack. I told him to say to Colonel Fasset *I knew no proper means to get them*, but believed I could start them by going there. (No. 10.)

Chittenden went near a mile and returned from the commanding officer, and said, "Colonel Fassett thought it would be useless to write, and had not," but wished me to go and do the best I could. I told him to tell the colonel that he would never see me again unless I succeeded, (and with assurance he immediately had the teams return back to Montpelier,) and in five minutes I was on the same horse I had drove 32 miles from Middlebury. It was bad going, and I rode fast 33 miles, hired a horse to go 7 miles, and immediately applied for arms at the depot of arms, and was informed by the sergeant of a guard of 30 men (Major Baily, the officer in charge, had not returned from Freeman's meeting) of the order of the Secretary of War, (No. 11.) I told him I was informed of that before I left Burlington, but had come for some of them peaceably, or otherwise; that the order probably originated with my suggestion to Major Bomford, that arms ought not to be delivered except on the order of the commanding officer of the *post*, instead of the *district*, a different thing; that there could be no justification in refusing to issue arms when the country was invaded; and that the arms went from my possession at Burlington the March previous; that I would say, do, or write anything to keep him clear of blame, and wrote Major Baily, and he agreed to deliver four thousand stand of arms. I left for Burlington, and got there at 11 o'clock at night, (No. 10.) Distance both ways, 80 miles. At daybreak the next morning they began to arrive, (No. 10,) and continued to supply all wants until the decisive battle of the 11th, (Nos. 10 and 11.) I reported to Colonel Fassett my success, and suggested that a part of them be left 6 miles east, at Williston, for fear the result would be against us. This was done at 9 or 10 o'clock the morning of the 10th, (Nos. 10 and 11.) He said he was then as bad off as before, as they had not a cartridge, (No. 11,) flint, or piece of match rope. (As to

that, they could use a firebrand, as they used to;) that he had tried all over the village to get flints, without success, and if they could get powder they could make cartridges, *and he imputed the failure of success to the opponents of the war.* And, he added, it is useless for the volunteers and militia to cross the lake into the woods without the means to defend themselves with; "and I must keep the volunteers and militia here, and you must go to Plattsburg and get the articles." I consented, and he said, "go and put off any craft you think you can go and return quickest with;" and I took passage in a packet sailed by Captain Branch; paid two dollars, rather than have him wait for an expected passenger. (One dollar fare for a person was the price.) The wind increased so that he ran into Peru bay, and fearing I should be delayed, stripped and walked as soon as possible eight miles to Fort Moreau; and as soon as I saw General Macomb he expressed gladness to see me, and said "nothing had been done in my absence." I enquired where the officer of ordnance and men were. His reply was, "*they have all run away*, and he did not know where." The officer left Tuesday night for Salmon River village, four miles southerly, and the men stole the Little Belt, a revenue boat, and went to the south end of Grand island, and all remaining until the enemy left. This I had since, from the men themselves, confirming General Macomb's statement to me. General Macomb directed the acting officer of ordnance, Lieutenant Crummell, to deliver me from the magazine anything I wanted, and the quartermaster to have a boat ready in a safe place to take me to Burlington. I was taken in a wagon two miles, south, to a sloop-like craft, having no oars or row-locks. There being no wind we could not stir, but kept watch all night; and at break of day (I was on watch then) a breeze came up and we sailed; and about two miles out from the wharf at Burlington the action commenced on the lake; and as soon as I landed there was the greatest confusion to get on board the transports I ever saw; and it is my belief that my exertions in procuring the arms, and then the ammunition, was a great cause of a victory instead of a defeat on the 11th of September, 1814; for which I never had a cent for services nor expenses any way whatever; and if Congress should not consider me entitled to pay to the close of the war, on the evidence presented, I submit to their justice if I am not entitled to some remuneration for the foregoing important services.

And I further depose and say: That the horse I have mentioned (No. 10) I gave $95 for to Amaziah Jones, of Cornwall, and that he asked $100; that he was injured in his off hind leg or thigh particularly, and was lame ever after, so as to be only an expense, and that he died my property in the possession or keeping of Isaac Landon, of Cornwall, in five or six months; (said Landon is now dead) that said horse was a favorite with Mr. Jones, had never been put to hard usage or journeying, as I was informed and believe; and I believe this forced drive of said horse 32 miles in part of a day (No. 10) and 66 miles in part of the next was the cause of his injury and death. (See Ludrick Hepburn's deposition.) (No. 10.) I further say that I did not know the proper place to apply for pay for said horse.

Never presented any claim, and have never received any pay; and put my claim in, asking that justice may be done according to common usage in similar cases.

And I further depose and say: That at the time I was engaged by General Dearborn, as herein stated, there was not a man in Vermont (if in America) who could as readily do every kind of work the public service required. And in making the pikes had made about $10 per day and night; that while employed by government on two occasions, making stove pipe and ironing tent poles, I earned, as citizens were paid, from $25 to $30 per day; that up to the 1st of May, 1814, I did the duty of master armorer, master blacksmith, (part of the time,) and officer of ordnance, received and delivered all kinds of ordnance stores, made provision returns for men on extra duty in the shop, kept a check roll of the time they were employed, and certified to the same before they could obtain pay; and I further say—

That, engaging as I did in the service of the United States, and leaving my family, property, and business, I lost in the end four or five thousand dollars, and that I have never regained my former standing as to property. I fully confirm Mrs. Silence Canedy's testimony in her affidavit, although a *strong case*, but I knew the situation of the troops and acquiesced. It will also be seen that when I got a pass, *sometimes* I was limited to two days to go thirty-two miles and return, which shows the importance of my services.

ELIAS HALL.

STATE OF VERMONT, } *ss.*
Rutland county, }

Be it remembered that at Rutland, in the county of Rutland, this 2d day of June, 1856, personally appeared before me Elias Hall, of said Rutland, to me personally known, and made oath to the truth of the foregoing affidavit in due form of law.

MARTIN G. EVERTS,
Justice of the Peace.

I further claim that I ought to be paid at the rate of three dollars per day (expenses included) for the time I was compelled to spend after getting to Burlington, for pay for the pikes, and for time and services at Plattsburg with Colonel Brearly about the pikes, and for work and other duties at Thurber bay, with detention at camp, &c., to get pay—13, 14, 15, 16, 17, (18th got to Burlington,) making six days, $18; I paid $5 to be brought half way to Burlington from Champlain.

November 19, 1812.—Horse keeping at Burlington when absent, (at Sawyer's Hotel,) $3.

On presenting the account to Quartermaster Hatch for the pikes he rather objected to paying for the boxes, and I erased on the account, (as seen in No. 1,) but was sued before R. B. Bates, justice of the peace, and on trial was decided to pay for the boxes and cost, amounting to $5 95.

November, 1813.—To cash paid for expenses when ordered to Chataquay Four Corners. (The order supposed to be burned with my buildings September 24, 1843.) I was ordered there with two men; *head wind* prevented their getting to Plattsburg, twenty-five miles, till the fourth day, when General Hampton got in from his disastrous campaign, $5.

To paid passage back to Burlington for self and two men, $1 each, $3.

September 9, 1814.—To expenses from Burlington to Montpelier after arms, (paid seventy-five cents for horse seven miles,) $2 25.

September 10.—To $2 paid for passage to Peru bay, and other expenses to Plattsburg, and hack $1 20, $3 20.

I paid $95, cash in hand, for the horse mentioned in my affidavit on the 7th of September, 1814, and was the same horse as is specified in Ludrick Hepburn's deposition, dated January 7, 1833, No. 10.

ELIAS HALL.

STATE OF VERMONT, }
Rutland county, } *ss:*

Be it remembered that at Rutland, in said county, this 2d day of June, 1856, personally appeared Elias Hall, of Rutland, in said county, to me personally known, and made oath to the truth of the foregoing account, and that no part of the same has been paid or in any way discharged. Before me,

MARTIN G. EVERTS,
Justice of the Peace.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 13.

IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1858.—Ordered to be printed.

Mr. BIGGS made the following

REPORT.

[To accompany Bill S. 70.]

The Committee on Private Land Clams, to which was referred the petition of John Dick, praying that a patent may be issued to him for land settled by him under permit granted by the register of the land office at St. Augustine, Florida, have had the same under consideration and adopt and concur in the following report, heretofore made by this committee:

Under the provisions of the act of Congress for the armed occupation and settlement of the unsettled part of the peninsula of East Florida, approved August 4, 1842, the petitioner filed his notice with the register of the land office at St. Augustine for a "permit" to settle upon one hundred and sixty acres of land south of the line dividing townships numbered nine and ten, and described as follows: Lot No. 10 in section 29, lot No. 1 in section 31, fractional section 30, and the northwest of the northwest quarter of section 32, all of township 10, range 27 south and east, containing in the aggregate 153.20 acres.

On the 16th of April, 1843, the register of the land office issued "permit" No. 43 to the petitioner, giving him permission to settle upon the lands solicited, under the conditions of the said act; one of which was, "that no right or donation shall be acquired under this act within two miles of any permanent military post of the United States, established and garrisoned at the time such settlement and residence was commenced."

This permit was cancelled by the General Land Office, on the ground that the land embraced therein had been reserved in 1841 for military purposes.

The petitioner proves to the satisfaction of the committee that prior to his permit being cancelled he had complied with the requisitions of said act, and also proves that his settlement was not within four miles of any military post established and garrisoned at the date of his settlement, or at any time subsequent thereto; that he was compelled to relinquish and abandon his settlement by virtue of such cancellation of his "permit;" and that since that period he has continued to

reside south of the line specified in the said act of Congress, and ha not received lands under the said act.

The military reservation made by Mr. Van Buren, then President of the United States, embraced the south half of township nine, the whole of township ten, and fractional township eleven south, of ranges twenty-six and twenty-seven, giving a width from east to west of twelve miles, and a length from north to south of fifteen miles.

To ascertain the particulars in reference to such military reservation, the chairman of the committee addressed a letter to the honorable Secretary of War, in answer to which the said Secretary communicated a report from the quartermaster general, of which the following is an extract: "I have the honor to state that the lands claimed by Mr. Dick are believed to be more than two miles from the post at Pilatka. The reserve was made by the President on the 19th of February, 1841; the act for the benefit of which Mr. Dick applies was passed in 1842. * * * The lots or lands claimed are not now used for military purposes, and it is believed they will not be necessary for such purposes at any future time." In the conclusion of said report, in reference to the whole of the said reservation, he says: "It is no longer necessary for any military uses, and I recommend that it be transferred to the Land Department for sale."

In 1850 Congress passed an act giving one hundred and sixty acres of land to Richard H. Barrett within the said reserve, under similar circumstances of this case.

The committee are of opinion that since these lands are now no longer used for military purposes, and the petitioner having continued to reside south of the line specified by said act, thereby aiding to effect the object designed by making donation grants, and has not availed himself of the benefits of said act by settling upon other lands, that Congress ought to grant him the lands upon which such settlement was made by virtue of said "permit" from the register, they therefore report the accompanying bill and recommend its passage.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 14.

IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1858.—Ordered to be printed.

Mr. KENNEDY made the following

REPORT.

[To accompany Bill S. 71.]

The Committee on Private Land Claims, to whom was referred the "memorial of Joseph Ménard, praying to be allowed to relocate certain warrants for land granted to the late Marquis de Lafayette, of which he is the assignee," have had the same under consideration, and adopt and concur in the following report heretofore made by this committee:

These warrants were issued under the act of Congress of 1803 by the Secretary of War, and located under the act approved March 27, 1804.

The location of warrants number three, four, and five, was found to be upon lands owned by private claimants, their title to which was subsequently confirmed. These locations, therefore, were cancelled by the General Land Office.

Subsequent to such location, the interest of the Marquis de Lafayette to the warrants in question was assigned to third parties. There being no authority to relocate the said warrants under the act of 1804, after their first location had been cancelled, the legal holders of said warrants made application to Congress, who, by an act approved February 26, 1845, authorized the relocation of said warrants—three, four, and five—upon any of the unappropriated public lands within the State of Louisiana. Under this latter act of Congress the said warrants were relocated, and, upon application for a patent, the locations under two of said warrants—to wit: numbers four and five—were cancelled by the Commissioner of the General Land Office, on the ground that the lands located were covered by *live-oak timber*, and was therefore not subject to location.

The petitioner, yielding to the decision of the Commissioner, now asks that, since the locations under these warrants have been twice set aside and cancelled, he may be permitted to relocate the said warrants, numbered four and five, upon any of the public lands of the United States.

The act of 1845 would be ample enough to authorize a relocation within the State of Louisiana; but owing to the fact that nearly all of the lands in said State have either been disposed of by the United States, or are covered by private claims, the right, therefore, to relocate under said act would be of no great value to the claimant.

The committee are of opinion that justice to the petitioner requires the passage of an amendatory act, giving him the right to relocate said warrants upon any of the public lands subject to sale at private entry; they therefore report the accompanying bill, and recommend its passage.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 15.

IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1858.—Ordered to be printed.

Mr. KENNEDY made the following

REPORT.

[To accompany Bill S. 72.]

The Committee on Private Land Claims, to whom was referred S. bill 595, *"a bill for the relief of Daniel Whitney," have had the same under consideration, and concur in and adopt the following report, heretofore made by this committee:*

That they have examined the papers and proofs accompanying said bill, and contained in the American State Papers, and find that on the 15th day of September, 1823, Francis Lavonture presented to the commissioners appointed under the act of 1823 to hear and determine the claims of persons to tracts of land occupied and cultivated by them in the Green Bay settlement on the 1st of July, 1812, his claim, and the testimony to support it, to a tract of land described as follows:

"Commencing at low-water mark on Fox river, and running west eighty arpents, or so far as to make said claim contain six hundred and forty acres, as confirmed by said commissioners; and bounded on the south by a certain tract occupied by the United States garrison; west and north by wild or uncultivated lands; and east by Fox river, being 16 arpents in breadth."

That the said commissioners decided that the claim be confirmed, and that it was not in conflict with any confirmation before made, (vol. 4 Am. State Papers, Green's edition,) and that they gave their certificate to the correctness of the proceedings had before them. That although by the act those proceedings confirmed and made perfect the title, vesting the same in the said Lavonture, yet the said tract of land was embraced in a report made by the said commissioners to the Secretary of the Treasury upon all the unsettled claims in Michigan.

That the Secretary of the Treasury, instead of executing or carrying into effect the law of 1823, and instead of selecting the doubtful and uncertain claims from those which were confirmed, decided to lay all the claims before Congress, and submit all the decisions of the commissioners to it for supervision, refusing to cause the claims actually

confirmed by law to be surveyed, and patents to be issued to the claimants.

That on the 17th of April, 1828, Congress passed an act to confirm certain claims passed upon by the commissioners, excluding those in the county of Michilimackinac, and also certain lands occupied by the United States for military purposes. That about the time of the passage of this act, the President of the United States (upon erroneous representations) was induced to make a large military reservation of land, in the vicinity of Fort Howard, at Green Bay, amounting to five or six thousand acres. In this tract was included the land of Francis Lavonture. The confirmatory act of 1828 was, therefore, of no benefit to him in procuring him the evidence of his title, as the Secretary, after its passage, refused the patent because his land was thus embraced in the reservation.

That the title to the land continues in this condition, although the post, as a military station for troops, has been abandoned, and every part of the reservation has ceased to be occupied for military or government purposes; that the lands are not now required for such purposes, notice having been given during the year 1854, by the Secretary of War, for their sale; and that no compensation was ever made to the said Francis Lavonture for thus taking his land.

The action of the War Department seems to render it necessary, to relieve the claimants, to pray for an act of Congress in their behalf.

From the facts above set forth, the committee are of opinion that the said Lavonture, or his legal representative, is entitled to the confirmation of his title; they therefore report back the bill without amendment, and recommend its passage.

35TH CONGRESS, 1st Session. } SENATE. { REPORT No. 16.

IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1858.—Ordered to be printed.

Mr. BIGGS made the following

REPORT.

[To accompany Bill S. 73.]

The Committee on Private Land Claims, to whom was referred the memorial of Mrs. Jane Smith, praying to be allowed a pre-emption right to certain lands, concurring in the report made by the Committee on Public Lands, February 2, 1857, *upon this memorial, adopt the same and make it their report:*

It appears by the affidavit of Mrs. Smith that she is the owner of the east part of section thirty-three, in township six north, range five east, in the State of Alabama; and that she has enclosed and improved the west half of the southwest fractional quarter, and the west half of the northwest fractional quarter of the same section, which lands were formerly held as an Indian reservation for Peter Randon, but which were abandoned by him in 1836. In consequence of being held as a reservation, said lands are not subject to private entry.

The memorialist, therefore, prays to be allowed to enter the same at the minimum price of government lands.

The Commissioner of the General Land Office corroborates the statements of the memorialist, so far as they relate to the lands referred to having been held as an Indian reservation by Peter Randon, and of his abandonment of the same in 1836. He also states that there is no obstacle in the way of special legislation in favor of Mrs. Smith.

The committee therefore report the accompanying bill for her relief.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 17.

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1858.—Ordered to be printed.

Mr. PUGH made the following

REPORT.

[To accompany Bill S. 46.]

The Committee on Public Lands, to whom was referred Senate bill No. 46, "to grant the right of pre-emption in certain lands to the Indiana yearly meeting of the Society of Friends," has had the same under consideration, and recommends its passage.

The committee adopts the report on this subject made at the last Congress, namely:

The Committee on Public Lands, to whom was referred the memorial of Charles F. Coffin, clerk, "signed by direction and on behalf of the meeting for sufferings of Indiana yearly meeting of Friends," has had the same under consideration, and asks leave now to report:

It appears that almost, or quite, forty years ago, the Indiana yearly meeting of Friends, in conjunction with the Baltimore and Ohio yearly meetings of the same religious society, appointed a permanent committee to found a mission with the Shawnee tribe of Indians, and instruct them, as far as possible, in the arts of civilized life, in letters, and in the doctrines of the Christian religion.

Acting under the direction of these yearly meetings, and furnished with funds by them, from time to time, the committee established a school, and made other suitable arrangements for the mission at Wapakousta, in the State of Ohio, where the Indians then resided. The school was maintained faithfully until the Shawnees disposed of their land in Ohio to the United States, and migrated to their present location beyond the Mississippi river, when, at the earnest solicitation of the chiefs and councillors of the tribe, the committee removed the school and mission to what is now Kansas Territory, and there erected buildings, and made other valuable improvements, upon a tract of land designated for that purpose.

It appears, furthermore, that in the new establishment, as in the former one, these yearly meetings, by their committee, labored zealously, and in good faith, to promote the temporal and spiritual welfare of the Indians with whom they have been so long connected.

Previous to the treaty, dated May 10, 1854, those in charge of the

school and mission were allowed, by the authorities of the tribe, to enclose and use as much land as they required, and obtain timber from any part of the Shawnee domain. By that treaty, however, the committee of Friends was restricted to a tract of three hundred and twenty acres, constituting the mission farm, which tract is almost or entirely destitute of timber. And it seems to be now impossible to maintain the establishment, even with a large annual expenditure of money from the yearly meetings above mentioned, unless a supply of timber can be secured.

The yearly meeting of Indiana, therefore, asks permission to locate and purchase, as a pre-emption right, at the price of one dollar and twenty-five cents an acre, two tracts in the neighborhood of the mission farm, namely: one hundred and twenty acres west of the farm, and two hundred acres on the south side of the Kansas river.

This application has been approved (the committee understand) by the Shawnee tribe in council, as well as by the Commissioner of Indian Affairs and the Commissioner of the General Land Office. The only obstacle is in the fact that our general statutes do not authorize any such pre-emption. The Commissioner of the Land Office speaks of it, however, in this language:

"The application is one which would recommend itself favorably, I should think, to the consideration of Congress; and it would be gratifying to me to learn that it had met with favor from that body, who alone can grant relief in the premises."

It should be recollected, also, that this mission is the first ever established with the Shawnees; that they were then in a wild, and, in fact, desolate condition; that they are now comfortably established in a fertile country, and have cultivated farms, with horses and cattle, and are far advanced in civilization.

The treaty of May 10, 1854, reserved two or three entire sections of land for the benefit of the Methodist mission—an establishment of much later date—for which payment is to be made by the education of a specified number of the Shawnee children. In these circumstances the proposition of the society of Friends to purchase the mission farm assigned to it and two neighboring tracts of woodland, three hundred and twenty acres, at the usual price in cases of pre-emption, seems to your committee entirely reasonable.

A bill is reported, therefore, in accordance with the prayer of the memorial, with a section (third) intended to prevent the lands, or any part of them, from ever being used for the purposes of speculation.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 18.

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1858.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 81.]

The Committee on Private Laud Claims, to whom was referred the "petition of Laurent Millaudon, praying confirmation of his title to certain lands in Alabama," have had the same under consideration and submit the following report:

The committee find the facts in this case set forth in a report submitted by Mr. Clay, of Alabama, from the Committee on Public Lands, at the 2d session of the 25th Congress, (Senate Documents, vol. 4, 1837-'38,) which are as follows: "Under the provisions of the act of 1812, authorizing the investigation of land titles south of the 31st degree, and east of the Mississippi, an individual, without any authority for so doing, filed two alleged Spanish permits for lands on the east side of the Mobile bay, in favor of J. B. Lorendine in the behalf of the Baron de Feriot; these claims were favorably reported upon by Commissioner Crawford," and communicated to the House of Representatives on the 5th day of January, 1816; in which report the said claims were numbered 90 and 91 of the 3d class.—(American State Papers, Public Lands, vol. 3, page 11.) "Subsequent to this report, but before Congress had any action thereon, one Arthur L. Simms became the purchaser of the right of De Feriot to the lands; and on the 3d of March, 1819, Congress passed an act confirming all the claims so favorably reported by the Commissioner; and, under that act, the claims were regularly surveyed by the proper officers in 1830, and confirmed by the Surveyor General in 1835, and are represented on the plats of the public surveys as the De Feriot claims, in township C south, of range two east, in the St. Stephen's district, Alabama. Subsequent to this, to wit: on the 20th of March, 1837, Laurent Millaudon, relying upon the representations made to him of the genuineness of those claims, and upon all the previous action of the officers of the government and of Congress, by which they were declared to be valid and good titles, and as covering lands to which the government had no claim, became the purchaser of certain portions of the same from Simms. Doubts having afterwards arisen as to the justice of these claims, with a view of securing the lands, preemption floats were laid thereon. Under the titles thus purchased by

Mr. Millaudon, and believed by him to be most unimpeachable, he went on in making the most extensive preparations to establish a city upon those lands, and it appears to the committee, from the evidence adduced by him, that in this enterprise he has already actually expended upwards of $100,000. In March last, the question as to the validity of the De Feriot titles being brought before the General Land Office for consideration, that office required a report from the land officers at St. Stephens, upon all the facts and evidence in the case; and it satisfactorily appearing from that report and accompanying documents that these claims of De Feriot were fraudulent in themselves, one purporting to be founded on a grant from Cayetano Perez, in 1800, when he was first in office, for twenty-two days, in December, 1803, as commandant *ad interim*, and was not in office as commandant of the post until 1809, and the other being only a permission for the temporary use of a tract of six or seven arpents on the Bayou Fra, or Froid, for a cowpen, for the security of cattle during an apprehended incursion of a band of Indians, the General Land Office decided that the De Feriot titles, being fraudulent, conveyed no title to the present holders under them. In the correctness of this decision (if the question had been an original one, and independent of the act of the commissioner and the act of Congress of 1819) the committee, after examining the report and documents upon which it is founded, fully concur, as they also do in the decision of the same office, that as the lands were represented upon the plats as private claims, and have not been surveyed into sections, &c., as public lands, they were not subject to be floated on under the provisions of the pre-emption law, and no right to the land was acquired by those floats being placed thereon.

"From these decisions it results that Mr. Millaudon, an innocent purchaser of title, which he had every reason to believe, from all the previous action of the government thereon, was a perfect one, after an outlay of upwards of one hundred thousand dollars upon the land, now finds that that title, if not void, is at least questionable, and that all his expenditure is upon lands, perhaps, belonging to the United States."

The lands embraced within the two De Feriot claims, as surveyed in 1830 and confirmed by the surveyor general in 1835, are still the property of the United States, with the exception of a strip off of the north end thereof, which is covered by a confirmation to William Patterson.

In view of the fact that these claims were reported for confirmation by the Commissioner, confirmed by the act of Congress of 1819, surveyed and confirmed by the Surveyor General of the United States, and reserved and set apart by the General Land Office for a satisfaction of these claims, together with the further fact that the claimant is an innocent purchaser, for a valuable consideration, the committee are of opinion that Congress ought to confirm the title of these lands, according to said survey of 1830, to the person or persons claiming said title, except to the extent that the said Patterson claim, as at present located, interferes and encroaches upon the De Feriot claims, as surveyed in 1830; they herewith report a bill for that purpose and recommend its passage.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 19.

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1858.—Submitted, and ordered to be printed.

Mr. BAYARD made the folllowing

REPORT.

The Committee on the Judiciary, to whom was referred the protest against the election of the Hon. Graham N. Fitch and the Hon. Jesse D. Bright as senators in Congress from the State of Indiana, report:

The committee find that the protests against the election of the Hon. Graham N. Fitch as a senator in Congress from the State of Indiana were referred to the Committee on the Judiciary on the 10th of February, 1857, and on the 26th of the same month a resolution was reported by the committee authorizing testimony to be taken both by the protestants and the sitting member. The resolution not being acted upon by the Senate at that session, from the pressure of other business, the protests were again referred to the committee on the 9th of March last, at the special session of the Senate, and the same resolution, with a slight amendment, reported by the committee on the 13th of the same month, which being taken up on the day it was reported, a debate ensued upon an amendment offered by the Hon. Mr. Trumbull, of Illinois, and the Senate having on the previous day resolved to adjourn "*sine die*" on the 14th of March, at 1 o'clock, the resolution reported by the committee was ordered to lie on the table.

The protests against the election of the Hon. Jesse D. Bright, as well as against the election of the Hon. Graham N. Fitch, having been referred at the present session, and the objections of the protestants and allegations of the sitting members being identical in both cases, the committee have adopted and recommend the passage of the resolution reported to the Senate by the committee at the special session on the 13th day of March last, with such variation as is requisite to make it apply to the cases of both the sitting members, as follows:

Resolved, That in the case of the contested election of the Hon. Graham N. Fitch and the Hon. Jesse D. Bright, senators returned and admitted to their seats from the State of Indiana, the sitting members, and all persons protesting against their election, or any of them, by themselves, or their agents or attorneys, be permitted to

take testimony on the allegations of the protestants and the sitting members touching all matters of fact therein contained, before any judge of the district court of the United States, or any judge of the supreme or circuit courts of the State of Indiana, by first giving ten days' notice of the time and place of such proceeding in some public gazette printed at Indianapolis.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. 19, PART 2.

IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1858.—Ordered to be printed.

Mr. TRUMBULL submitted the following

VIEWS OF THE MINORITY

OF THE

Committee on the Judiciary, to whom were referred the protests against the right of Graham N. Fitch and Jesse D. Bright to seats as senators from the State of Indiana.

The legislature of Indiana, called the general assembly, is composed of a senate of fifty members, and a house of representatives of one hundred members, and two-thirds of each house is, by the constitution, required to constitute a quorum thereof. Each house is declared to be judge of the election and qualification of its members, and required to keep a journal of its proceedings. No regulation exists by law in Indiana as to the manner in which members of the State senate are to be inducted into office. No law or regulation is there existing providing the time, place, or manner of electing United States senators.

It appears by the journal of the senate of Indiana, that on the opening of the senate at the meeting of the legislature, January 8, 1857, forty-nine of the senators were present, and that all the newly elected members were duly sworn, took their seats, and continued thereafter to act with the other senators till the close of the session. The only absentee senator took his seat January 13, 1857. Protests were filed contesting the seats of three of the newly elected members, which were afterwards examined and considered by the senate, and they were each found and declared to be entitled to seats, respectively, by majorities more or less numerous, all which is entered upon and appears by the journal of said senate.

The State constitution makes it the duty of the speaker of the house of representatives to open and publish the votes for governor and lieutenant governor in the presence of both houses of the general assembly. No provision exists by the constitution making such meeting or presence of the two houses a convention, or providing any officers therefor, or authorizing or empowering the same to transact any business whatever, except by joint vote forthwith to proceed to elect a governor or lieutenant governor in case of a tie vote.

Both houses being in session, the speaker notified them that he should proceed to open and publish the votes for governor and lieutenant governor, on Monday the 12th day of January, at 2½ o'clock p. m., in the hall of the house. Shortly before the hour arrived the president of the senate announced that he would proceed immediately to the hall of the house of representatives; and thereupon, together with such senators as choose to go, being a minority of the whole number thereof, he repaired to the hall of the house of representatives, and there, in their presence, and in the presence of the members of the house, the votes for governor and lieutenant governor were duly counted and published by the speaker, and A. P. Willard, the then president of the senate, was declared duly elected governor, and A. A. Hammon lieutenant governor, of said State.

At the close of this business, a senator present, without any vote for that purpose, declared the meeting (by him then called a convention) adjourned to the 2d day of February, 1857, at two o'clock.

The senate hearing of this proceeding, on the 29th day of January, 1857, as appears by its journal, passed a resolution protesting against the proceedings of said so-called convention, disclaiming all connexion therewith or recognizance thereof, and protesting against any election of United States senators or any other officer thereby. On the 2d of February, 1857, the president of the senate, with a minority of its members, again attended in the hall of the house, and without proceeding to any business, and without any vote, declared the meeting (by him called a convention) adjourned until the 4th day of February, 1857, at which time the president of the senate, with twenty-four of its members, went to the hall of the house of representatives, and there they, together with sixty-two members of the house, proceeded to elect two senators of the United States, to wit: Graham N. Fitch and Jesse D. Bright, they each receiving eighty-three votes, and no more, at their respective elections, twenty-three of which votes were by members of the senate.

Against these elections so made, protests by twenty-seven members of the senate of Indiana and thirty-five members of the house of representatives of said State have been duly presented, alleging that, in the absence of any law, joint resolution, or regulation of any kind by the two houses composing the legislature of Indiana providing for holding a joint convention, it is not competent for a minority of the members of the Senate, and a majority but less than a quorum of the members of the house of representatives of said state, to assemble together and make an election of United States senators.

Of the facts as herein stated there is no dispute, as we understand.

It is now alleged by the sitting senators, respectively, as we understand the substance of their allegations, in contradiction of the Senate Journal, that the three State senators whose seats were contested were not legally elected and qualified; that they were without the expressly required credentials, the certificate of the proper and only returning officer, and that they were, notwithstanding, directed to be sworn in by a presiding officer chosen for the purpose by the members of the senate designated as republicans, for the clear purpose, illegal

and fraudulent, in fact, of defeating an election of senators of the United States.

Under these circumstances, we object to the adoption of the resolution for the taking of testimony to sustain these allegations, because the said election of United States senators, so conducted, is obviously illegal and insufficient, and cannot be cured by any proof of these allegations; and we insist that the Senate should now proceed to a definitive decision of the question.

J. COLLAMER,
L. TRUMBULL.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 20.

IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1858.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Bill S. 85.]

The Committee on Foreign Relations, to whom was referred the message of the President of the United States, dated the 7th of January instant, in answer to the resolution of the Senate calling for the "correspondence, instructions, and orders to the United States naval forces on the coast of Central America, connected with the arrest of Walker and his associates, at or near the port of San Juan de Nicaragua," have had the same, with the documents accompanying, under consideration, and now report:

It appears from these documents that the President of the United States, having reason to believe that lawless men were engaged at certain points in the United States, in fitting out military expeditions against some of the republics of Central America, in violation of the laws of the country, caused the annexed circular to the civil authorities of the United States at the suspected points, to be issued by the Secretary of State in the month of September last:

NAVY DEPARTMENT, *October* 2, 1857.

SIR: I am directed by the President to transmit to you, for your guidance, the accompanying circular, which he has caused to be issued from the State Department to various civil officers.

You will regard the instructions contained in it as addressed to yourself.

I am, respectfully, your obedient servant,

ISAAC TOUCEY.

Com. FREDK. CHATARD,
Commanding U. S. sloop Saratoga, Aspinwall, N. G.

[A similar letter to the above was addressed to Commander Thatcher, commanding the United States sloop Decatur, Panama, N. G., and to the commandants of the navy yards at Portsmouth, N. H., New York, Boston, Philadelphia, Norfolk, Pensacola, and San Francisco.]

DEPARTMENT OF STATE,
Washington, September 18, 1857.

SIR: From information received at this department there is reason to believe that lawless persons are now engaged within the limits of the United States in setting on foot and preparing the means for military expeditions to be carried on against the territories of Mexico, Nicaragua, and Costa Rica; republics with whom the United States are at peace; in direct violation of the sixth section of the act of Congress, approved 20th April, 1818. And, under the eighth section of the said act, it is made lawful for the President, or such person as he shall empower, to employ the land and naval forces of the United States, and the militia thereof, "for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States." I am, the refore, directed by the President to call your attention to the subject, and to urge you to use all due diligence to avail yourself of all legitimate means at your command to enforce these and all other provisions of the said act of 20th April, 1818, against those who may be found to be engaged in setting on foot or preparing military expeditions against the territories of Mexico, Costa Rica, and Nicaragua, so manifestly prejudicial to the national character and so injurious to the national interest. And you are also hereby instructed promptly to communicate to this department the earliest information you may receive relative to such expeditions.

I am, sir, your obedient servant, LEWIS CASS.

Which circular was afterwards communicated, as instructions, to the officers commanding naval stations in the United States, and to Commander Chatard, commanding the United States ship Saratoga, at Aspinwall, New Granada.

Afterwards, on the 3d of October, 1857, the same circular was communicated by the Secretary of the Navy to Flag-officer H. Paulding, commanding the home squadron, then also at Aspinwall.

Subsequently, Lieutenant Almy, commanding the United States steamer Fulton, then lying at Washington, being ordered to proceed, with the steamer under his command, to the coast of Central America, with a view to intercept any such unlawful military expedition. In addition to the circular above cited from the State Department, was further instructed as follows:

NAVY DEPARTMENT, *October* 12, 1857.

SIR: In reply to your letter of the 7th instant, it is true that American citizens have the right to travel and go to where they please, when engaged in lawful pursuit, but not to violate the laws of their own or of any other country. They have a right to expatriate and to become citizens of any country which is willing to receive them, but not to make that right a mere cloak and cover for a warlike expedition against it or its government. Your instructions do not authorize you to act arbitrarily or upon mere suspicion. You will not seize an American vessel, or bring her into port, or use the force under your

command to prevent her landing her passengers, upon mere suspicion. You will be careful not to interfere with lawful commerce. But where you find that an American vessel is manifestly engaged in carrying on an expedition or enterprise from the territories or jurisdiction of the United States against the territories of Mexico, Nicaragua or Costa Rica, contrary to the 6th section of the act of Congress of April 20, 1818, already referred to, you will use the force under your command to prevent it, and will not permit the men or arms engaged in it, or destined for it, to be landed in any port of Mexico or Central America.

En route for Chiriqui you will touch at Mobile and New Orleans, and communicate with the United States district attorney at each of those ports.

I am, respectfully, your obedient servant,

ISAAC TOUCEY.

Lieutenant JOHN J. ALMY,
Commanding U. S. steamer Fulton, Washington, D. C.

It does not clearly appear whether the supplemental instructions of October the 12th to Lieutenant Almy were communicated by him to Captain Paulding and Commander Chatard or not, but inasmuch as he reported to Captain Paulding as early as the 10th day of November, on his way to Chiriqui in Costa Rica, it may be presumed they were.

And again, on the 16th of November, 1857, Captain Sands, commanding the United States steam frigate Susquehanna at Key West, was ordered to proceed immediately with that frigate to San Juan de Nicaragua, stopping at intermediate points on the coast, and to remain there until further orders; and for his guidance in reference to unlawful military expeditions, a copy of the same circular from the State Department was communicated to him.

Such being the measures adopted by the President to prevent the departure of any unlawful military expedition from the United States, or to intercept them should they escape from our shores, it further appears that, on the 25th of November last, William Walker, formerly (if not then) a citizen of the United States, with about one hundred and fifty-five armed followers, entered the harbor of San Juan de Nicaragua, on board a steamer called the "Fashion," and immediately landed with his men on a point of land, forming the northern and eastern boundary of said harbor, called "Punta Arenas," a short distance from the town of San Juan, which is on the opposite side of the harbor. Point Arenas your committee understand to be a part of the territory of the republic of Nicaragua, in Central America.

The manner of, and circumstances attending, the landing, are detailed in the official report thereof, made by Commander Chatard to Captain Paulding, as follows:

UNITED STATES SHIP SARATOGA,
San Juan del Norte, November 27, 1857.

SIR: I have the honor to inform you that, on the 24th instant, about 2 p. m., a steamer appeared off the harbor, and then stood off to the eastward down the coast. She came into the harbor next

morning about 7 o'clock. Her conduct of the day before made me suspect her, but my suspicions were entirely lulled when she was standing into the harbor; not more than fifteen or twenty men appeared on her deck. I expected her to anchor, but instead of that, with a full head of steam, she ran right up for the wharf of Scott's buildings. I, as well as the first lieutenant, thought it was a party sent to open the transit route. I immediately sent a boat with a lieutenant to board her, and to see what she was and to examine her papers. When he returned, he informed me that it was the steamer Fashion, from Mobile—papers all right, proper clearance, cargo, &c., and a number of passengers marked on the bills. The passengers proved to be Walker, with 150 men, who all landed immediately, before my boat got to them. * * * * * *
He landed fifty men or more at the mouth of the Colorado, before he came here; they went up in boats to surprise Castillo, and to try and take possession of the steamboats there.

It further appears from the documents that when the "Fashion" arrived off San Juan, where the United States ship Saratoga was then lying, the steamer, as reported by Commander Chatard, without entering the harbor, proceeded down the coast, and did not return until the next day. It afterwards became known that the "Fashion" continued on her course to the mouth of the river "Colorado," (the southern outlet of the San Juan into the sea,) and there detached about fifty men and officers, well armed, in boats, who proceeded up that branch of the San Juan. Upon their debarkation the Fashion returned, as stated, to the harbor of San Juan, and landed the residue of the force on board of her, with various provisions, stores, and munitions of war, at Punta Arenas.

Information of these proceedings being communicated to Captain Paulding, on board the United States ship Wabash, then lying at Aspinwall, in New Granada, that officer at once proceeded with his ship to San Juan, where he arrived on the 6th of December. He found Walker with his party in camp at the place where he landed. Having displayed a large naval and military force ready for action, and sufficient to overcome any resistance that could be offered, Walker and those with him gave up their arms and surrendered to Captain Paulding on the 8th of December.

It is just to this officer that the reasons assigned by him for his conduct in this regard, and his views of the circumstances attending it, should be stated in his own language by the following extracts from his official reports to the Navy Department:

[Extract.]

FLAG-SHIP WABASH,
Off San Juan del Norte, December 11, 1857.

SIR: I arrived here on the 6th instant, and on the 8th, with a force from the squadron that could not be resisted by General Walker, demanded the surrender of his arms and the embarkation of himself and followers from Point Arenas.

The officers and men of his organization, together with such stores as could be received, are on board the "Saratoga," and she will sail this evening or to-morrow morning for Norfolk. I shall direct Capt. Chatard to report to the department for instructions.

In the course I have pursued I have acted from my judgment, and trust it may meet the approbation of the President.

Extract of a letter from Captain Paulding to the Secretary of the Navy, dated Flag Ship Wabash, off Aspinwall, December 15, 1857:

I could not regard Walker and his followers in any other light than as outlaws who had escaped from the vigilance of the officers of the government, and left our shores for the purpose of rapine and murder, and I saw no other way to vindicate the law and redeem the honor of our country than by disarming and sending them home.

In doing so, I am sensible of the responsibility that I have incurred, and confidently look to the government for my justification.

Regarded in its true light, the case appears to me a clear one; the points few and strong.

Walker came to Point Arenas from the United States, having, in violation of law, set on foot a military organization to make war upon a people with whom we are at peace. He landed there with armed men and munitions of war, in defiance of the guns of a ship-of-war placed there to prevent his landing.

With nothing to show that he acted by authority, he formed a camp, hoisted the Nicaraguan flag, called it the "Headquarters of the army of Nicaragua," and signed himself the commander-in-chief.

With this pretension, he claimed the right of a lawful general over all persons and things within sight of his flag. Without right or authority he landed fifty men at the mouth of the river Colorado, seized the fort of Castillo, on the San Juan, captured steamers and the goods of merchants in transit to the interior, killed men, and made prisoners of the peaceful inhabitants, sending to the harbor of San Juan del Norte some thirty or forty men, women, and children, in the steamer "Morgan."

In doing these things without the show of authority, they were guilty of rapine and murder, and must be regarded as outlaws and pirates. They can have no claim to be regarded in any other light.

Humanity, as well as law and justice and national honor, demanded the dispersion of these lawless men.

The remnant of the miserable beings who surrendered at Rivas were conveyed in this ship last summer to New York, and their sufferings are yet fresh in the memory of all on board.

Besides the sufferings that would necessarily be inflicted upon an innocent and unoffending people, these lawless followers of General Walker, misguided and deceived into a career of crime, would doubtless have perished in Central America, or their mutilated and festering bodies have been brought back to their friends at the expense of their country.

For the above reasons, which appear to my mind quite sufficient, I have disarmed and sent to the United States General William Walker and his outlawed and piratical followers for trial, or for whatever action the government, in its wisdom, may think proper to pursue.

The provisions, stores, and munitions found in Walker's camp and on the point, claimed as belonging to his party, were afterwards conveyed on board the United States ships. They consisted of provisions and stores of various kinds, and in large quantities, with arms and ammunition, and other military equipment, in amount apparently suited to the number of his men and for a military incursion.

After the arrest, Walker was allowed, at his request, to find his own way to the United States on his parol that he would deliver himself up, with a note from Captain Paulding, to the marshal of the United States at New York. This was done. The marshal conducted him to Washington, where the Secretary of State declined to interfere, or to require his further detention, and he was discharged accordingly. The residue of the party captured with him were brought to Norfolk in the Saratoga. The correspondence shows nothing further in relation to those men; but from other sources the committee learn that no further detention of them was authorized by the Executive, and they were allowed to leave the ship at their pleasure.

Having thus stated what are considered by the committee the material facts shown by the documents accompanying the message, so far as necessary, to show the measures adopted by the Executive to enforce the laws prohibiting "the setting on foot within the United States, and the carrying on from the territories or jurisdiction of the United States," any military expedition against nations with whom we are at peace, and the facts attending the arrival of Walker and his party at Nicaragua, their arrest within the territories of that republic by our naval forces, and their being brought back to the United States, the committee proceed next to review the policy connected therewith, and the conclusions arrived at, as the same are set forth in the message of the President.

The sixth and eighth sections of the act approved April 20, 1818, entitled "An act in addition to the act for the punishment of certain crimes against the United States," are referred to in the message and in the circular of instructions from the Department of State as conferring power on the President, and making it his duty, by the use of the public force, to prevent unlawful military expeditions, within the meaning of the act, from being "set on foot" within the United States, or from being "carried on" beyond the limits and jurisdiction of the United States. These sections, for more convenient reference, are here recited:

SEC. 6. *And be it further enacted*, That if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or State, or of any colony, district, or people, with whom the United States are at peace, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years.

SEC. 8. *And be it further enacted*, That in every case in which a vessel shall be fitted out and armed, or attempted to be fitted out and

armed, or in which the force of any vessel-of-war, cruiser, or other armed vessel shall be increased or augmented, or in which any military expedition or enterprise shall be begun or set on foot, contrary to the provisions and prohibitions of this act; and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States, as before defined; and in every case in which any process issuing out of any court of the United States shall be disobeyed or resisted by any person or persons having the custody of any vessel-of-war, cruiser, or other armed vessel of any foreign prince or State, or of any colony, district, or people, or any subjects or citizens of any foreign prince or State, or of any colony, district, or people, in every such case it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of this act, and to the restoring the prize or prizes in the cases in which restoration shall have been adjudged, and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or State, or of any colony, district, or people with whom the United States are at peace.

The committee are of opinion that the last clause of section eight fully warranted the instructions given to the civil and military authorities by the circular quoted, and those to Lieutenant Almy, to prevent the landing of any unlawful military expedition from the United States in any part of Central America, so far as it imported the arrest of such expedition on the high seas and beyond the territorial jurisdiction of the country; and they are further of opinion that under the obligation of the President to "take care that the laws be faithfully executed," with the powers confided to him by this eighth section, it was incumbent on him to order the naval forces to pursue any such expedition which should leave the country, and intercept and arrest them anywhere on the high seas.

The ship which carried Walker and his party from the country was an American vessel, and cleared as such from the port of Mobile, in Alabama, under the American flag; and it is a clear principle of law, that the jurisdiction of the country to which the ship belongs, attends her on the high seas wherever she goes. In the matter of jurisdiction she is considered on the high seas as part of the territory of the country, and all on board are still within the jurisdiction of the United States.

If the person on board had, before leaving the country, committed an offence against the laws of the United States, they were, whilst under the flag of the country on the high seas, as amenable to its authority, as they were whilst in the territory of the United States. It was as fully competent to the law, to require their arrest on the high seas, as within the territory.

A question seems to have been made, however, in the present case,

whether the law of April, 1818, does authorize or direct the executive to use the public force to arrest a military expedition, (unlawful within the meaning of the act,) on the high seas after it has left the country? If it does not, a law which has remained in all its substantial provisions on the statute book for more than sixty years, intended to coerce on the part of our citizens, the observance of existing international relations, and thus to preserve the peace of the country, is so imperfect in its provisions, as to secure immunity to those who may offend against it, provided, by deception, or false and fraudulent practices, they can elude the vigilance of the police of the country, and thereby escape from its shores.

The 6th and 8th sections of the act above cited of 1818 are in the greater part literal transcripts of sections 5th and 7th, of the act of like character of June 5, 1794, the only material alteration being, that in the act of 1794 the offence is confined to setting on foot, or carrying on from the country, a military expedition against "the territory or dominions of any foreign prince or State;" whilst in the act of 1818 the words are added, "or of any colony, district, or people" with whom the United States are at peace—an enlargement, made to embrace the case of such unlawful expeditions, in aid of the revolutionists in Mexico and South America, then in arms against the Spanish dominion in those countries.

In the 6th section of the present act, [1818,] it is declared a high misdemeaner "within the territory or jurisdiction of the United States to begin, or set on foot, or prepare or provide the means for any military expedition, or enterprise, to be carried on from thence against," &c., &c. The offence is thus clearly defined: the *git* of it being the *intent to carry on* such expedition, &c., *from* the "territory or jurisdiction" of the United States. So long as it remained *in* the United States it would be harmless; but if begun, &c., with the *intent* to carry it on beyond the limits of the United States, the offence would be complete, though it should never have left the country.

But, as has been remarked, the law would have been singularly defective, where the end to be attained was to prevent such expeditions from *leaving the country*, if a successful escape to sea placed the offender beyond the reach of the law. On shore, he could be arrested by judicial process, calling in aid, if necessary, the *posse;* but at sea, he could only be safely pursued by the naval power. And we find, accordingly, in the 8th section, that where authority is given to the President, or such person as he shall have empowered for the purpose, to employ the land and naval forces of the United States, or the militia, to take possession of and detain any ship or vessel found in violation of the provisions of that act; or where any process issuing out of any court of the United States shall be disobeyed, or resisted, when used to carry into effect the provisions of that section, the like power (to use the land and naval forces) is given, "*also*, for the purpose of preventing the carrying on of any such expedition, &c., *from* the territories of the United States against the territories or dominions of any foreign prince," &c.

In the opinion of the committee, the unlawful expedition is "carried on from the territories or jurisdiction of the United States," when

it is *continued* on the high seas, on its way to its destination, and after it has left the country; and this is what the President is authorized to prevent, by the use of the naval force. The jurisdiction is clear, and the mandate is, to prevent the expedition being "carried on"—a mandate only to be obeyed by arresting the ship, with those on board, and bringing her back to answer the violated laws. The spirit of the act shows that it was the intention of the law, by the largest use of the whole public force of the United States, to put a stop to these unlawful enterprises on the part of our citizens, whilst on land, and within the ordinary jurisdiction of the country, by the army or (if the occasion required it) the militia; or, if in the harbors, bays, or rivers, the naval force. No distinction is made by the terms of the act, designating when the one arm is to be used or when the other; the character of each imports its appropriate use. But, after it was carried from the "territories or jurisdiction," it was still to be prevented. How? By means, of course, adequate to the end. By seizure at sea when carried on by sea.

In the present case, however, it appears that Walker and his followers had effected a landing on the shores of Central America, an within the territory of a foreign State, before they were arrested by Captain Paulding.

As a mere question of *lawful* authority, there can be no doubt that no arrest is lawful, unless made within the jurisdiction of the country; and as little, that this arrest was made without the jurisdiction. But the committee entirely agree with the President, that besides the United States, (the conduct of whose officer is in question,) none can take exception to the act, except the State whose jurisdiction was so invaded. Any complaint from Nicaragua of this violation of her territory should be received with due respect, and, if required, due amends should be made. But, as between the naval officer who made the arrest and his own government, whilst the committee must condemn the act as not within his instructions, and having no warrant in law, still they find everything in the attendant circumstances to show that he was actuated in what he did (using the language of the President) by "pure and patriotic motives, and in the sincere conviction that he was promoting the interests and vindicating the honor of his country."

Allowance, too, should perhaps be made, in reviewing this act, in the anomalous condition of the place where the arrest was made, and that the landing was with no hostile intent against Nicaragua. Although constituting part of the territory of Nicaragua, yet it is very certain that for any purpose of law or police the government of that State was not present. The pretension set up by Walker himself after he landed, that he was there as "commander-in-chief of the army of Nicaragua," the committee do not consider as worthy of serious criticism. Whatever right or authority he may once have had, or supposed himself to have had in the republic of Nicaragua, were at an end more than twelve months before, when he surrendered whatever authority he held and left the country.

The government *de facto* was at the time of his arrest in other hands, and so recognized by this government through an accredited minister.

with his "emigrants desirous of naturalization," viz: the armed expedition detached in boats up the Colorado to seize an inland fort, and the military camp immediately established on landing, as the "headquarters of the army" (not emigrants) "of Nicaragua."

The law of 1794, equally with that of 1818, was founded in wise policy, to preserve the peace of the country, and to maintain amity and amicable relations with foreign States. It denounces its penalties only against those, whether citizens or foreigners, who, while within its jurisdiction, abuse the protection and hospitalities of the laws by secret and unlawful practicings, to wage private war against nations with whom we are at peace, and in most cases dishonoring the American flag, used to shield them in transportation. Were such things tolerated, it would be to commit the peace of the country to every restless and turbulent adventurer who, unequal to, or disdainful of, the sober toils of peace, could find food for his ambition only in the license of the camp or in the rapine and ravages of war. It would take the affairs of government (in our foreign intercourse at least) from the hands of those to whom they are committed, by the Constitution and laws, and leave them under the control, or at the pleasure, of unknown and irresponsible agencies.

The committee, on full consideration, do not see that any amendment is required to the law of 1818, so far as power is concerned to arrest on the high seas. They find such power necessarily implied by the terms of the 8th section. But, inasmuch as that law may be made more efficient by some proper provisions for bringing offenders against it to trial, who after arrest beyond the territorial jurisdiction of the United States are brought back to the country, they report a bill for that purpose.

They recommend, in addition, the adoption of the following resolutions:

Resolved, That no further provisions of law are necessary to confer authority on the President to cause arrests and seizures to be made on the high seas for offences committed against the act entitled "An act in addition to the 'act for the punishment of certain crimes against the United States,' and to repeal the acts therein mentioned," approved April 20, 1818.

Resolved, That the place where William Walker and his followers were arrested being without the jurisdiction of the United States, their arrest was without warrant of law. But, in view of the circumstances attending it, and its result, in taking away from the territory of a State in amity with the United States American citizens who were there with hostile intent, it may not call for further censure than, as it might hereafter be drawn into precedent, if suffered to pass without remark.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 20.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1858.—Ordered to be printed.

AMENDMENT

Intended to be proposed by Mr. Slidell to the resolutions at the end of report (No. 20) from the Committee on Foreign Relations, made on the 25th instant, viz: add the following:

Resolved, That it is expedient that the President of the United States be authorized, during any future recess of Congress, to suspend, by proclamation, either wholly or partially, the operation of an act entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned," approved April 20, 1818, and of an act entitled "An act in addition to the act for the punishment of certain crimes against the United States," approved June 5, 1794, should, in his opinion, the public interests require such total or partial suspension—such suspension not to exceed the period of twelve months; and the causes which shall have induced the President to proclaim it to be communicated to Congress immediately on its first meeting thereafter.

Resolved, That the Committee on Foreign Relations be instructed to bring in a bill in conformity with the foregoing resolution.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 21.

IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1858.—Ordered to be printed.

Mr. DOUGLAS made the following

REPORT.

[To accompany Bill S. 86.]

The Committee on Territories, to whom was referred the message of the President communicating a copy of the constitution of Minnesota, beg leave to report:

On the 26th day of February 1857, Congress passed an act entitled "An act to authorize the people of the Territory of Minnesota to form a constitution and State government preparatory to their admission into the Union on an equal footing with the original States." By the 3d section of said act it was provided "that on the first Monday of June next, [1857,] the legal voters in each representative district then existing within the limits of the proposed State, are hereby authorized to elect two delegates for each representative to which said district may be entitled according to the apportionment for representatives to the territorial legislature, which election for delegates shall be held and conducted, and returns made, in all respects in conformity with the laws of said Territory regulating the election of representatives; and the delegates so elected shall assemble at the capitol of said Territory on the second Monday in July next, [1857,] and first determine, by a vote, whether it is the wish of the people of the proposed State to be admitted into the Union at that time, and if so, shall proceed to form a constitution and take all necessary steps for the establishment of a State government in conformity with the Federal Constitution, subject to the approval and ratification of the people of the proposed State." The construction placed on this act by the people of Minnesota was, that the term "representatives" embraced the members of both branches of the territorial legislature, and hence that the said convention might be composed of one hundred and eight, instead of seventy-eight delegates, to which it would be limited if the word representatives referred only to the members of the house of representatives of said legislature. Under this construction of the enabling act, one hundred and eight delegates were elected, and assembled at the capitol of the Territory in pursuance of its provisions, when a disagreement arose in respect to the legality of the election of certain delegates who held

certificates of election, which resulted in the organization of two separate bodies, each claiming to be the duly constituted convention in pursuance of the said act of Congress, the one holding its sessions in the hall of representatives with fifty-eight members, and the other in the council chamber with fifty-five members. Each convention proceeded to form a constitution, but before either had concluded its labors, wiser and more conciliatory counsels prevailed so far as to induce the appointment of a joint committee of conference, composed of ten delegates, five of whom were selected by each convention, which committee agreed upon a constitution and made duplicate copies of the same, and reported one of said duplicates to each of said conventions, respectively. The copy of the constitution thus reported to the convention which held its sessions in the council chamber was adopted by that convention on the 29th day of August, 1857, and signed by the officers and members of said convention, as follows:

HENRY H. SIBLEY, of Dakota county,
President of the Constitutional Convention of Minnesota.

Wm. Holcombe, of Washington county.
James S. Norris, do.
Henry N. Setzer, do.
Gold T. Curtis, do.
Newington Gilbert, do.
Charles J. Butler, do.
R. H. Sanderson, do.
Geo. L. Becker, of Ramsey county.
Moses Sherburne, do.
Lafayette Emmet, do.
William P. Murray, do.
W. A. Gorman, do.
John S. Prince, do.
Patrick Nash, do.
William B. McGrorty, do.
Paul Faber, do.
Michael E. Ames, do.
B. B. Meeker, of Hennepin county.
Charles L. Chase, do.
Calvin A. Tuttle, do.
Wm. W. Lashells, do.
Edwin C. Stacey, of Freeborn county.
David Gilman, of Benton county.
H. C. Wait, of Stearns county.
J. C. Shepley, do.
John W. Tenvoorde, do.
Wm. Sturgiss, of Morrison county.
W. W. Kingsbury, of St. Louis county.
R. H. Barrett, do.
Robert Kennedy, of Scott county.
Frank Warner, do.
Wm. A. Davis, do.

Daniel J. Burns, of Dakota county.
Josiah Burwell, do.
Henry G. Bailey, do.
Andrew Keegan, do.
James McFetridge, of Pembina county.
J. Jerome, do.
Xavier Cantell, do.
Joseph Rolette, do.
Louis Vasseur, do.
James C. Day, of Houston county.
O. W. Streeter, do.
Thomas W. Armstrong, of Mower county.
Joseph R. Brown, of Sibley county.
C. E. Flandrau, of Nicolett county.
Francis Basen, of Brown county.
Wm. B. McMahan, of Blue Earth county.
J. W. Swann, of Le Seur county.
Alfred E. Ames, of Hennepin county.
J. P. Wilson, of Pembina county.

Attest:

J. J. NOAH,
Secretary of the Constitutional Convention.

The copy of said constitution reported by the committee of conference to the convention which held its sessions in the hall of representatives was adopted by said convention on the 28th of August, 1857, and on the next day was signed by the officers and members of said convention, as follows:

ST. A. D. BULCOMBE,
President of the Constitutional Convention.

Benj'n C. Baldwin
D. M. Hall
Robert Lyle
S. H. Kemp
Wm. F. Russell
N. B. Robbins, jr.
Simeon Harding
W. H. C. Folsom
Wentworth Hayden
D. L. King
T. D. Smith
Edwin Page Davis
Thos. Wilson
E. N. Bates
John H. Murphy
Thomas Bolles
D. D. Dickerson
Thomas Foster
Lewis McKune
Joseph Peckham
George Watson
Charles F. Low
P. A. Cedarstam
Charles B. Sheldon
David Morgan
James A. McCan
John A. Anderson
A. H. Butler
Charles Hanson
Charles A. Coe
David A. Lecombe
John Cleghorn
Alanson B. Vaughn
Henry Eschele
Cyrus Aldrich
F. Ayer
Albert W. Coombs
Thomas J. Galbraith

W. J. Duley
R. L. Bartholomew
N. P. Bolburn
H. A. Billings
Aaron G. Hudson
Charles Gerrish
Frank Mantor
Amos Cogswell
Charles McClure
Boyd Phelps
H. W. Holley
B. E. Messer
W. H. Mills
John W. North
Oscar F. Perkins
Sam'l W. Putnam
L. K. Stannard
C. W. Thompson
L. C. Walker
Philip Winel.

Attest:

L. A. BABCOCK,
Secretary of the Constitutional Convention.

The constitution thus formed and signed was submitted to the people of Minnesota for their free acceptance or rejection, in compliance with its own requirements as well as of the act of Congress, at a general election held on the 13th day of October, and was then and there ratified and adopted by almost a unanimous vote. For more full and detailed information on the various points connected with the formation of the constitution of the State of Minnesota, the committee refer to exhibits marked A, B, C, D.

Being satisfied that the constitution presented is republican in form, and is the act and deed of the people of Minnesota, and a fair embodiment of their will, and that the boundaries established therein are the same as those prescribed in the enabling act of last session, the committee have prepared and submit a bill for an act to admit Minnesota into the Union on an equal footing with the original States. The fourth section of the enabling act provides for a census to be taken by the United States marshal of the Territory, with the view of ascertaining the number of representatives to which Minnesota may be entitled in the Congress of the United States; and declare that "said State shall be entitled to one representative, and such additional representatives as the population of the State shall, according to the census, show it would be entitled to according to the present ratio of representation." It will be seen by exhibit marked E, that the returns of the census have been received from all the counties except eight, and partial returns from one other county, showing, as far as heard from, a population of 136,464, with seven entire counties and part of another to be heard from. Although an approximate estimate of the entire population of Minnesota might be made by taking these returns as far as they go, and computing them with the vote on the adoption of the constitution in the counties not returned, which vote will be found in the exhibit, your committee have thought it better to leave the question of representation as it stands fixed in the enabling act, and hence have provided in the second section of the bill that said State shall be entitled to one representative, and such additional representatives as the population of the State shall, according to the census authorized by the enabling act, show it would be entitled to according to the present ratio of representation, and no more, leaving the House

of Representatives to ascertain the number when full returns of the census shall be received, presuming that the residue of the returns will be received by the time that the act for the admission of Minnesota shall have become a law.

A.

WASHINGTON, D. C., *January* 17, 1858.

SIR: Having been informed by you that the Committee on Territories desire information upon certain points connected with the history of the constitution of Minnesota, I take great pleasure in forwarding such information to you, with the view that, if you deem it advisable, you can submit it to the committee.

When the members of the convention, who had been elected delegates in pursuance of the "enabling act," passed at the last session of Congress, assembled at the capitol of Minnesota for the purpose of forming a constitution, a disagreement arose in respect to the legality of the election of several members. The result of which disagreement was the organization of *two bodies*, each claiming to be the legally constituted constitutional convention. The one holding its sessions in the hall of the house of representatives with fifty-eight members, and the other holding its sessions in the council chamber with fifty-five members.

The undersigned was a member of the convention which held its sessions in the council chamber, and was a member of the conference committee composed of five members appointed by each convention; which committee reported to the two conventions, respectively, the constitution of the State of Minnesota; which constitution was adopted by the convention holding its sessions in the council chamber, and signed by its officers and members, with the exception of three, who were absent on the day of signing said instrument. The same constitution was also adopted by the convention holding its sessions in the hall of the house of representatives, and signed by its officers and members on the same day, to wit: the 29th day of August, A. D. 1857. The constitution thus formed and adopted was submitted to the people of Minnesota for their ratification or rejection in pursuance of the provisions thereof, at an election held on the 13th day of October, A. D. 1857, and ratified by the people, by nearly a unanimous vote. The names of the officers and members and mode of authentication of the copy of the constitution signed by the convention in the hall of the house of representatives was the same as appears in the pamphlet copy of said constitution herewith enclosed. And the names of the officers and members and mode of authentication of the copy of the constitution adopted by the convention in the council chamber is the same as appears in the copy of the same furnished by Governor Medary to the President of the United States; both copies of the constitution being identical; and the same transmitted by the President to the Senate.

On the 13th day of October, 1857, an election was held under said constitution for governor and other State officers, members of the legislature and of Congress. In which election the whole people of the State participated, as will be seen by the large vote polled; both

political parties having previously held their State and county conventions, and nominated their candidates for the various offices provided for in said constitution.

On the 2d day of December last, the legislature convened and organized by the election of their officers. Every member being in attendance during the session and voting on all questions coming before them; and recognizing by their oaths and their votes said constitution as the fundamental law of the State of Minnesota, subject to the acceptance of the same by Congress. All of the above facts occurring previous to the 1st day of November last, I state upon my own personal knowledge, and those occurring subsequent to that date I state upon the information of others, and have no doubt of their entire accuracy.

Very respectfully, your obedient servant,

W. W. KINGSBURY,
Delegate.

Hon. S. A. DOUGLAS,
Chairman of the Committee of Territories.

B.

WASHINGTON, D. C.,
January 14, 1858.

SIR: In answer to the questions propounded in your note of yesterday, we beg leave to reply—

1st. At the time of our departure from Minnesota the census had not been completed, therefore the best data we can give you is the vote within the limits of the State, polled on the 13th of October last for members of Congress, which was 39,244. Allowing six persons for each voter, would give us a population at that time of 235,464, which we believe to be very nearly correct.

2d. By the enabling act, passed at the last session of Congress, one hundred and eight "delegates were authorized to constitute the convention to form the constitution."

3d. The election was ordered in conformity to the enabling act, consequently but 108 delegates could have been legally elected. We deem it proper, however, to state that several seats were in contest between the two political parties.

4th. All that were legally elected, and all that claimed seats, met together at the time and place designated by law.

5th. Immediately after they met a motion was made to adjourn. The democratic members, claiming that the motion was carried, left the hall. The opposition remained and organized. The next day the former met, as per adjournment, and organized. One party holding regular sessions in the hall of representatives, the other holding its regular sessions in the council chamber; each claiming to be the true convention.

6th. The dispute was occasioned by each party charging that

persons claimed seats not entitled to them. But without entering into detail, we trust that your committee will be fully satisfied upon this inquiry, when we state that whatever differences may have arisen on these points were afterwards honorably and satisfactorily settled between the two parties. The breach was healed by each party appointing a committee of conference, which committee agreed upon the constitution now before your honorable committee. And the constitution thus agreed upon was adopted by both divisions of the convention, and afterwards ratified by the almost unanimous vote of the people of the Territory, and certified to by Governor Samuel Medary, under the seal of Minnesota.

Perhaps it would not be improper here to state that both political parties held State and county nominating conventions, and that each nominated candidates to fill the various offices provided for in the aforesaid constitution, and that at the election, which was spirited and hotly contested, there was a general attendance of the voters. That the election was conducted without violence; that the members elected to the State legislature met at the capitol on the second day of December last, as prescribed by the constitution; that every member was in attendance; that they proceeded to organize and to transact business in the name of the State; and that every member of both parties voted upon all questions which came before them.

Believing that the people of Minnesota have proceeded in strict accordance with the law of Congress called the "enabling act," and in conformity to the spirit of the Constitution of the United States; and knowing that the entire population of the State expect speedy admission into the Union, we earnestly trust that their expectations may not be disappointed, especially as there are questions now before Congress of vital importance to the State.

Very respectfully, your obedient servants,

JAS. SHIELDS,
HENRY M. RICE.

We concur in the foregoing:

GEO. L. BECKER,
W. W. PHELPS,
J. M. CAVANAUGH.

As a member of the committee of conference agreed upon by both divisions of the constitutional convention, I wish to testify to the unanimity by which that constitution was adopted by both parties, and fully concur in the statement of facts embodied in the above reply.

W. H. KINGSBURY, *Delegate.*

C.

The proposed constitution of the State of Minnesota, adopted in convention on Friday, August 28, 1857; *signed by the officers and members of the convention, August* 29, 1857. *A true copy, compared carefully with the enrolled copy deposited with the secretary of the territory.*

PREAMBLE.

We, the people of the State of Minnesota, grateful to God for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and our posterity, do ordain and establish this constitution.

ARTICLE FIRST.—*Bill of Rights.*

SECTION 1. Government is instituted for the security, benefit, and protection of the people, in whom all political power is inherent, together with the right to alter, modify, or reform such government whenever the public good may require it.

SEC. 2. No member of this State shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the State, otherwise than in the punishment of crime whereof the party shall have been duly convicted.

SEC. 3. The liberty of the press shall forever remain inviolate, and all persons may freely speak, write, and publish their sentiments on all subjects, being responsible for the abuse of such right.

SEC. 4. The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases, in the manner prescribed by law.

SEC. 5. Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel or unusual punishments be inflicted.

SEC. 6. In all criminal prosecutions the accused shall enjoy the right to a speedy public trial by an impartial jury of the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defence.

SEC. 7. No person shall be held to answer for a criminal offence, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or navy, or in the militia when in actual service in time of war or public danger; and no person for the same offence shall be put twice in jeopardy of punishment, nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law. All persons shall, before conviction, be bailable by sufficient sureties, ex-

cept for capital offences, when the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless, when in cases of rebellion or invasion, the public safety may require.

SEC. 8. Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely and without purchase; completely, and without denial; promptly, and without delay, conformably to the laws.

SEC. 9. Treason against the State shall consist only in levying war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

SEC. 10. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

SEC. 11. No bill of attainder, *ex post facto* law, nor any law impairing the obligation of contracts shall ever be passed, and no conviction shall work corruption of blood or forfeiture of estate.

SEC. 12. No person shall be imprisoned for debt in this State; but this shall not prevent the legislature from providing for imprisonment or holding to bail persons charged with fraud in contracting said debt. A reasonable amount of property shall be exempt from seizure or sale for the payment of any debt or liability; the amount of such exemption shall be determined by law.

SEC. 13. Private property shall not be taken for public use without just compensation therefor first paid and secured.

SEC. 14. The military shall be subordinate to the civil power, and no standing army shall be kept up in this State in time of peace.

SEC. 15. All lands within this State are declared to be allodial, and feudal tenures of every description, with all their incidents, are prohibited. Leases and grants of agricultural land for a longer period than twenty-one years, hereafter made, in which shall be reserved any rent or service of any kind, shall be void.

SEC. 16. The enumeration of rights in this constitution shall not be construed to deny or impair others retained by, and inherent in, the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect, or support, any place of worship, or to maintain any religious or ecclesiastical ministry against his consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the State; nor shall any money be drawn from the treasury for the benefit of any religious societies, or religious or theological seminaries.

SEC. 17. No religious test or amount of property shall ever be required as a qualification for any office of public trust under the State. No religious test or amount of property shall ever be required as a qualification of any voter at any election in this State; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion.

ARTICLE SECOND.—*On name and boundaries.*

SECTION 1. This State shall be called and known by the name of the State of Minnesota, and shall consist of, and have jurisdiction over, the territory embraced in the following boundaries, to wit: Beginning at the point in the centre of the main channel of the Red River of the North, where the boundary line between the United States and the British possessions crosses the same; thence up the main channel of said river to that of the Bois des Sioux river; thence up the main channel of said river to Lake Traverse; thence up the centre of said lake to the southern extremity thereof; thence in a direct line to the head of Big Stone lake; thence through its centre to its outlet; thence by a due south line to the north line of the State of Iowa; thence east along the northern boundary of said State to the main channel of the Mississippi river; thence up the main channel of said river, and following the boundary line of the State of Wisconsin, until the same intersects the St. Louis river; thence down the said river to and through Lake Superior, on the boundary line of Wisconsin and Michigan, until it intersects the dividing line between the United States and the British possessions; thence up Pigeon river, and following said dividing line to the place of beginning.

SEC. 2. The State of Minnesota shall have concurrent jurisdiction on the Mississippi, and all other rivers and waters bordering on the said State of Minnesota, so far as the same shall form a common boundary to said State, and any other State or States now or hereafter to be formed by the same; and said river and waters, and navigable waters leading into the same, shall be common highways, and forever free, as well to the inhabitants of said State as to other citizens of the United States, without any tax, duty, impost, or toll therefor.

SEC. 3. The propositions contained in the act of Congress entitled "An act to authorize the people of the Territory of Minnesota to form a constitution and State government preparatory to their admission into the Union on an equal footing with the original States" are hereby accepted, ratified, and confirmed, and shall remain irrevocable without the consent of the United States; and it is hereby ordained that this State shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations Congress may find necessary for securing the title to said soil to *bona fide* purchasers thereof; and no tax shall be imposed on lands belonging to the United States, and in no case shall non-resident proprietors be taxed higher than residents.

ARTICLE THIRD.—*Distribution of the Powers of Government.*

SECTION 1. The powers of the government shall be divided into three distinct departments, the legislative, executive, and judicial;

and no person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others, except in the instances expressly provided in this constitution.

ARTICLE FOURTH.—*Legislative Department.*

SECTION 1. The legislature of the State shall consist of a senate and house of representatives, who shall meet at the seat of government of the State at such times as shall be prescribed by law.

SEC. 2. The number of members who compose the senate and house of representatives shall be prescribed by law; but the representation in the senate shall never exceed one member for every five thousand inhabitants, and in the house of representatives one member for every two thousand inhabitants. The representation in both houses shall be apportioned equally throughout the different sections of the State in proportion to the population thereof, exclusive of Indians not taxable under the provisions of law.

SEC. 3. Each house shall be the judge of the election returns and eligibility of its own members; a majority of each shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as it may provide.

SEC. 4. Each house may determine the rules of its proceedings, sit upon its own adjournment, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member; but no member shall be expelled a second time for the same offence.

SEC. 5. The house of representatives shall elect its presiding officer, and the senate and house of representatives shall elect such other officers as may be provided by law; they shall keep journals of their proceedings, and from time to time publish the same; and the yeas and nays, when taken on any question, shall be entered on such journals.

SEC. 6. Neither house shall, during a session of the legislature, adjourn for more than three days, (Sundays excepted,) nor to any other place than that in which the two houses shall be assembled, without the consent of the other house.

SEC. 7. The compensation of senators and representatives shall be three dollars per diem, during the first session, but may afterwards be prescribed by law. But no increase of compensation shall be prescribed which shall take effect during the period for which the members of the existing house of representatives may have been elected.

SEC. 8. The members of each house shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during the session of their respective houses, and in going to or returning from the same. For any speech or debate in either house they shall not be questioned in any other place.

SEC. 9. No senator or representative shall, during the time for which he is elected, hold any office under the authority of the United States or of the State of Minnesota, except that of postmaster; and no senator or representative shall hold an office under the State which had

been created, or the emoluments of which had been increased, during the session of the legislature of which he was a member until one year after the expiration of his term of office in the legislature.

SEC. 10. All bills for raising revenue shall originate in the house of representatives, but the senate may propose and concur with amendments, as on other bills.

SEC. 11. Every bill which shall have passed the senate and house of representatives, in conformity to the rules of each house, and the joint rules of the two houses, shall, before it becomes a law, be presented to the governor of the State. If he approve, he shall sign and deposit it in the office of the secretary of state for preservation, and notify the house where it originated of the fact. But if not, he shall return it with his objections to the house in which it shall have originated, when such objections shall be entered at large on the journal of the same, and the house shall proceed to reconsider the bill. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each house, respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature, by adjournment within that time, prevent its return, in which case it shall not be a law. The governor may approve, sign, and file in the office of the secretary of state, within three days after the adjournment of the legislature, any act passed during the three last days of the session, and the same shall become a law.

SEC. 12. No money shall be appropriated except by bill. Every order, resolution, or vote requiring the concurrence of the two houses, (except such as relate to the business or adjournment of the same,) shall be presented to the governor for his signature, and before the same shall take effect shall be approved by him, or being returned by him with his objections, shall be repassed by two-thirds of the members of the two houses, according to the rules and limitations prescribed in case of a bill.

SEC. 13. The style of all laws of this State shall be: "Be it enacted by the legislature of the State of Minnesota." No law shall be passed unless voted for by a majority of all the members elected to each branch of the legislature, and the vote entered upon the journal of each house.

SEC. 14. The house of representatives shall have the sole power of impeachment, through a concurrence of a majority of all the members elected to seats therein. All impeachments shall be tried by the Senate, and when sitting for that purpose the senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the members present.

SEC. 15. The legislature shall have full power to exclude from the

privilege of electing, or being elected, any person convicted of bribery, perjury, or any other infamous crime.

SEC. 16. Two or more members of either house shall have liberty to dissent and protest against any act or resolution which they may think injurious to the public or to any individual, and have the reason of their dissent entered on the journal.

SEC. 17. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature. The legislature shall prescribe by law the manner in which evidence in cases of contested seats in either house shall be taken.

SEC. 18. Each house may punish by imprisonment, during its session, any person not a member who shall be guilty of any disorderly or contemptuous behavior in their presence, but no such imprisonment shall at any time exceed twenty-four hours.

SEC. 19. Each house shall be open to the public during the sessions thereof, except in such cases as in their opinion may require secresy.

SEC. 20. Every bill shall be read on three different days in each separate house, unless, in case of urgency, two-thirds of the house where such bill is pending shall deem it expedient to dispense with this rule, and no bill shall be passed by either house until it shall have been previously read twice at length.

SEC. 21. Every bill having passed both houses shall be carefully enrolled, and shall be signed by the presiding officer of each house. Any presiding officer refusing to sign a bill which shall have previously passed both houses shall hereafter be incapable of holding a seat in either branch of the legislative assembly, or hold any other office of honor or profit in the State, and in case of such refusal, each house shall, by rule, provide the manner in which such bill shall be properly certified for presentation to the governor.

SEC. 22. No bill shall be passed by either house of the legislature upon the day prescribed for the adjournment of the two houses. But this section shall not be so construed as to preclude the enrollment of a bill, or the signature and passage from one house to the other, or the reports thereon from committees, or its transmission to the executive for his signature.

SEC. 23. The legislature shall provide by law for an enumeration of the inhabitants of this State in the year 1865, and every tenth year thereafter. At their first session after each enumeration so made, and also at their first session after each enumeration made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional senatorial and representative districts, and to apportion anew the senators and representatives among the several districts, according to the provisions of section second of this article.

SEC. 24. The senators shall also be chosen by single districts of convenient contiguous territory, at the same time that the members of the house of representatives are required to be chosen, and in the same manner, and no representative district shall be divided in the formation of a senate district. The senate districts shall be numbered in regular series, and the senators chosen by the districts designated by odd numbers shall go out of office at the expiration of the first year,

and the senators chosen by the districts designated by even numbers shall go out of office at the expiration of the second year; and thereafter the senators shall be chosen for the term of two years, except there shall be an entire new election of all the senators at the election next succeeding each new apportionment provided for in this article.

SEC. 25. Senators and representatives shall be qualified voters of the State, and shall have resided one year in the State, and six months immediately preceding the election in the district from which they are elected.

SEC. 26. Members of the Senate of the United States from this State shall be elected by the two houses of the legislature, in joint convention, at such times and in such manner as may be provided by law.

SEC. 27. No law shall embrace more than one subject, which shall be expressed in its title.

SEC. 28. Divorces shall not be granted by the legislature.

SEC. 29. All members and officers of both branches of the legislature shall, before entering upon the duties of their respective trusts, take and subscribe an oath or affirmation to support the Constitution of the United States, the constitution of the State of Minnesota, and faithfully and impartially to discharge the duties devolving upon him as such member or officer.

SEC. 30. In all elections to be made by the legislature, the members thereof shall vote *viva voce*, and their votes shall be entered on the journal.

SEC. 31. The legislature shall never authorize any lottery or the sale of lottery tickets.

ARTICLE FIFTH.—*Executive Department.*

SECTION 1. The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor, treasurer, and attorney general, who shall be chosen by the electors of the State.

SEC. 2. The returns of every election, for the officers named in the foregoing section, shall be made to the secretary of state, and by him transmitted to the Speaker of the house of representatives, who shall cause the same to be opened and canvassed before both houses of the legislature, and the result declared within three days after each house shall be organized.

SEC. 3 The term of office for the governor and lieutenant governor shall be two years, and until their successors are chosen and qualified. Each shall have attained the age of twenty-five years, and shall have been a *bona fide* resident of the State for one year next preceding his election. Both shall be citizens of the United States.

SEC. 4. The governor shall communicate, by message, to each session of the legislature such information touching the state and condition of the country as he may deem expedient. He shall be commander-in-chief of the military and naval forces, and may call out such forces to execute the laws, to suppress insurrection and to repel invasion. He may require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating

to the duties of their respective offices; and he shall have power to grant reprieves and pardons after conviction for offences against the State, except in cases of impeachment. He shall have power, by and with the advice and consent of the senate, to appoint a State librarian and notaries public, and such other officers as may be provided by law. He shall have power to appoint commissioners to take the acknowledgement of deeds, or other instruments in writing, to be used in the State. He shall have a negative upon all laws passed by the legislature, under such rules and limitations as are in this constitution prescribed. He may, on extraordinary occasions, convene both houses of the legislature. He shall take care that the laws be faithfully executed, fill any vacancy that may occur in the office of secretary of state, treasurer, auditor, attorney general, and such other State and district offices as may be hereafter created by law until the next annual election, and until their successors are chosen and qualified.

SEC. 5. The official term of the secretary of state, treasurer, and attorney general shall be two years; the official term of the auditor shall be three years, and each shall continue in office until his successor shall have been elected and qualified. The governor's salary for the first term under this constitution shall be $2,500 per annum. The salary of the secretary of state for the first term shall be $1,500 per annum. The auditor, treasurer, and attorney general, shall each, for the first term, receive a salary of $1,000 per annum. And the further duties and salaries of said executive officers shall each thereafter be prescribed by law.

SEC. 6. The lieutenant governor shall be *ex-officio* president of the senate, and in case a vacancy should occur, from any cause whatever, in the office of governor, he shall be governor during such vacancy. The compensation of lieutenant governor shall be double the compensation of a State senator. Before the close of each session of the senate they shall elect a president *pro tempore*, who shall be lieutenant governor in case a vacancy should occur in that office.

SEC. 7. The term of each of the executive officers named in this article shall commence upon taking the oath of office after the State shall be admitted by Congress into the Union, and continue until the first Monday in January, 1860, except the auditor, who shall continue in office until the first Monday in January, 1861, and until their successors shall have been duly elected and qualified.

SEC. 8. Each officer created by this article shall, before entering upon his duties, take an oath or affirmation to support the Constitution of the United States, and of this State, and faithfully discharge the duties of his office to the best of his judgment and ability.

SEC. 9. Laws shall be passed at the first session of the legislature after the State is admitted into the Union to carry out the provisions of this article.

ARTICLE SIXTH—*Judiciary.*

SECTION 1. The judicial power of the State shall be vested in a supreme court, district courts, courts of probate, justices of the peace,

and such other courts inferior to the supreme court as the legislature may from time to time establish by a two-thirds vote.

SEC. 2. The supreme court shall consist of one chief justice and two associate justices, but the number of associate justices may be increased to a number not exceeding four by the legislature by a two-thirds vote, when it shall be deemed necessary. It shall have original jurisdiction in such remedial cases as may be prescribed by law, and appellate jurisdiction in all cases, both in law and equity, but there shall be no trial by jury in said court. It shall hold one or more terms in each year, as the legislature may direct, at the seat of government, and the legislature may provide by a two-thirds vote that one term in each year shall be held in each or any judicial district. It shall be the duty of such court to appoint a reporter of its decisions. There shall be chosen by the qualified electors of the State one clerk of the supreme court, who shall hold his office for the term of three years, and until his successor is duly elected and qualified; and the judges of the supreme court, or a majority of them, shall have the power to fill any vacancy in the office of clerk of the supreme court until an election can be regularly had.

SEC. 3. The judges of the supreme court shall be elected by the electors of the State at large, and their term of office shall be seven years, and until their successors are elected and qualified.

SEC. 4. The State shall be divided by the legislature into six judicial districts, which shall be composed of contiguous territory, be bounded by county lines, and contain a population as nearly equal as may be practicable. In each judicial district one judge shall be elected by the electors thereof, who shall constitute said court, and whose term of office shall be seven years. Every district judge shall, at the time of his election, be a resident of the district for which he shall be elected, and shall reside therein during his continuance in office.

SEC. 5. The district courts shall have original jurisdiction in all civil cases, both in law and equity, where the amount in controversy exceeds one hundred dollars, and in all criminal cases where the punishment shall exceed three months' imprisonment, or a fine of more than one hundred dollars, and shall have such appellate jurisdiction as may be prescribed by law. The legislature may provide by law that the judge of one district may discharge the duties of the judge of any other district not his own, when convenience or the public interest may require it.

SEC. 6. The judges of the supreme and district courts shall be men learned in the law, and shall receive such compensation, at stated times, as may be prescribed by the legislature, which compensation shall not be diminished during their continuance in office, but they shall receive no other fee or reward for their services.

SEC. 7. There shall be established in each organized county in the State a probate court which shall be a court of record, and be held at such times and places as may be prescribed by law. It shall be held by one judge, who shall be elected by the voters of the county for the term of two years. He shall be a resident of such county at the time of his election, and reside therein during his continuance in office, and his compensation shall be provided by law. He may appoint his own

clerk, where none has been elected, but the legislature may authorize the election by the electors of any county of one clerk or register of probate for such county, whose powers, duties, term of office and compensation shall be prescribed by law. A probate court shall have jurisdiction over the estates of deceased persons and persons under guardianship, but no other jurisdiction, except as prescribed by this constitution.

SEC. 8. The legislature shall provide for the election a sufficient number of justices of the peace in each county, whose term of office shall be two years, and whose duties and compensation shall be prescribed by law; provided, that no justice of the peace shall have jurisdiction of any civil cause where the amount in controversy shall exceed one hundred dollars, nor in a criminal cause where the punishment shall exceed three months' imprisonment, or a fine of over one hundred dollars, nor in any cause involving the title to real estate.

SEC. 9. All judges other than those provided for in this constitution shall be elected by the electors of the judicial district, county or city, for which they shall be created, not for a longer term than seven years.

SEC. 10. In case the office of any judge shall become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor until a successor is elected and qualified. And such successor shall be elected at the first annual election that occurs more than thirty days after the vacancy shall have happened.

SEC. 11. The justices of the supreme court and the district courts shall hold no office under the United States, nor any other office under this State. And all votes for either of them for any elective office under this constitution, except a judicial office given by the legislature or the people, during their continuance in office, shall be void.

SEC. 12. The legislature may at any time change the number of judicial districts or their boundaries when it shall be deemed expedient, but no such change shall vacate the office of any judge.

SEC. 13. There shall be elected in each county where a district court shall be held one clerk of said court, whose qualifications, duties, and compensation shall be prescribed by law, and whose term of office shall be four years.

SEC. 14. Legal pleadings and proceedings in the courts of this State shall be under the direction of the legislature. The style of all process shall be "the State of Minnesota," and all indictments shall conclude "against the peace and dignity of the State of Minnesota."

SEC. 15. The legislature may provide for the election of one person in each organized county in this State, to be called a court commissioner, with judicial power and jurisdiction not exceeding the power and jurisdiction of a judge of the district court at chambers; or the legislature may, instead of such election, confer such power and jurisdiction upon judges of probate in the State.

ARTICLE SEVENTH.—*Elective Franchise.*

SECTION 1. Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the United States one year, and in this State for four months next preceding any election, shall be entitled to vote at such election, in the election district of which he shall at the time have been for ten days a resident, for all officers that now are or hereafter may be elective by the people:

1st. White citizens of the United States.

2d. White persons of foreign birth, who shall have declared their intention to become citizens, conformably to the laws of the United States upon the subject of naturalization.

3d. Persons of mixed white and Indian blood, who have adopted the customs and habits of civilization.

4th. Persons of Indian blood residing in this State, who have adopted the language, customs, and habits of civilization, after an examination before any district court of the State, in such manner as may be provided by law, and shall have been pronounced by said court capable of enjoying the rights of citizenship within the State.

SEC. 2. No person not belonging to one of the classes specified in the preceding section; no person who has been convicted of treason or any felony, unless restored to civil rights; and no person under guardianship, or who may be *non compos mentis*, or insane, shall be entitled or permitted to vote at any election in this State.

SEC. 3. For the purpose of voting, no person shall be deemed to have lost a residence by reason of his absence while employed in the service of the United States, nor while engaged upon the waters of this State or of the United States, nor while a student of any seminary of learning, nor while kept at any almshouse or other asylum, nor while confined in any public prison.

SEC. 4. No soldier, seaman, or marine in the army or navy of the United States shall be deemed a resident of this State in consequence of being stationed within the same.

SEC. 5. During the day on which any election shall be held, no person shall be arrested by virtue of any civil process.

SEC. 6. All elections shall be by ballot, except for such town officers as may be directed by law to be otherwise chosen.

SEC. 7. Every person who, by the provisions of this article, shall be entitled to vote at any election, shall be eligible to any office which now is, or hereafter shall be, elective by the people in the district wherein he shall have resided thirty days previous to such election, except as otherwise provided in this constitution, or the Constitution and laws of the United States.

ARTICLE EIGHTH.—*School Funds, Education, and Science.*

SECTION 1. The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature to establish a general and uniform system of public schools.

SEC. 2. The proceeds of such lands as are, or hereafter may be, granted by the United States for the use of schools within each township in this State shall remain a perpetual school fund to the State, and not more than one-third of said lands may be sold in two years, one-third in five years, and one-third in ten years; but the lands of the greatest valuation shall be sold first, provided that no portion of said lands shall be sold otherwise than at public sale. The principal of all funds arising from sales, or other disposition of lands or other property granted or entrusted to this State in each township for educational purposes, shall forever be preserved inviolate and undiminished; and the income arising from the lease or sale of said school lands shall be distributed to the different townships throughout the State, in proportion to the number of scholars in each township between the ages of five and twenty-one years, and shall be faithfully applied to the specific objects of the original grants or appropriations.

SEC. 3. The legislature shall make such provisions, by taxation or otherwise, as, with the income arising from the school fund, will secure a thorough and efficient system of public schools in each township in the State.

SEC. 4. The location of the University of Minnesota, as established by existing laws, is hereby confirmed, and said institution is hereby declared to be the University of the State of Minnesota. All the rights, immunities, franchises, and endowments heretofore granted or conferred are hereby perpetuated unto the said university; and all lands which may be granted hereafter by Congress, or other donations for said university purposes, shall vest in the institution referred to in this section.

ARTICLE NINTH.—*Finances of the State, and Banks and Banking.*

SECTION 1. All taxes to be raised in this State shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation, and be equalized and uniform throughout the State.

SEC. 2. The legislature shall provide for an annual tax sufficient to defray the estimated expenses of the State for each year; and whenever it shall happen that such ordinary expenses of the State for any year shall exceed the income of the State for such year, the legislature shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year, together with the estimated expenses of such ensuing year.

SEC. 3. Laws shall be passed taxing all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property, according to its true value in money; but public burying grounds, public school houses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches, church property used for religious purposes and houses of worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value $200 for each individual, shall by general laws be exempt from taxation.

SEC. 4. Laws shall be passed for taxing the notes and bills discounted, or purchase moneys loaned, and all other property, effects, or dues of every description, of all banks and of all bankers, so that all property employed in banking shall always be subject to a taxation equal to that imposed on the property of individuals.

SEC. 5. For the purpose of defraying extraordinary expenditures, the State may contract public debts; but such debts shall never, in the aggregate, exceed $250,000. Every such debt shall be authorized by law, for some single object, to be distinctly specified therein; and no such law shall take effect until it shall have been passed by the vote of two-thirds of the members of each branch of the legislature, to be recorded by yeas and nays on the journals of each house, respectively; and every such law shall levy a tax, annually, sufficient to pay the annual interest of such debt, and also a tax sufficient to pay the principal of such debt within ten years from the final passage of such law, and shall specially appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation and taxes shall not be repealed, postponed, or diminished, until the principal and interest of such debt shall have been wholly paid. The State shall never contract any debts for works of internal improvement, or be a party in carrying on such works, except in cases where grants of land or other property shall have been made to the State, especially dedicated by the grant to specific purposes; and in such cases the State shall devote thereto the avails of such grants, and may pledge or appropriate the revenues derived from such works in aid of their completion.

SEC. 6. All debts authorized by the preceding section shall be contracted by loan on State bonds of amounts not less than five hundred dollars each, on interest, payable within ten years after the final passage of the law authorizing such debt, and such bonds shall not be sold by the State under par. A correct registry of all such bonds shall be kept by the treasurer in numerical order, so as always to exhibit the number and amount unpaid, and to whom severally made payable.

SEC. 7. The State shall never contract any public debt, unless in time of war to repel invasion, or suppress insurrection, except in the cases and in the manner provided in the fifth and sixth sections of this article.

SEC. 8. The money arising from any loan made, or debt or liability contracted, shall be applied to the object specified in the act authorizing such debt or liability, or to the repayment of such debt or liability, and to no other purpose whatever.

SEC. 9. No money shall ever be paid out of the treasury of this State except in pursuance of an appropriation by law.

SEC. 10. The credit of the State shall never be given or loaned in aid of any individual, association, or corporation.

SEC. 11. There shall be published by the treasurer, in at least one newspaper printed at the seat of government, during the first week in January of each year, and in the next volume of the acts of the legislature, detailed statements of all moneys drawn from the treasury during the preceding year; for what purposes, and to whom paid, and

by what law authorized; and also of all moneys received, and by what authority, and from whom.

SEC. 12. Suitable laws shall be passed by the legislature for the safe keeping, transfer, and disbursement of the State and school funds, and all officers and other persons charged with the same shall be required to give ample security for all moneys and funds of any kind, to keep an accurate entry of each sum received, and of each payment and transfer; and if any of said officers or other persons shall convert to his own use, in any form, or shall loan, with or without interest, contrary to law, or shall deposit in banks, or exchange for other fund, any portion of the funds of the State, every such act shall be adjudged to be an embezzlement of so much of the State funds as shall be thus taken, and shall be declared a felony; and any failure to pay over or produce the State or school funds intrusted to such persons on demand shall be held and taken to be *prima facie* evidence of such embezzlement.

SEC. 13. The legislature may, by a two-thirds vote, pass a general banking law, with the following restrictions and requirements, viz:

First. The legislature shall have no power to pass any law sanctioning, in any manner, directly or indirectly, the suspension of specie payments by any person, association, or corporation issuing bank notes of any description.

Second. The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require ample security, in United States stock or State stocks, for the redemption of the same in specie; and in case of a depreciation of said stocks, or any part thereof, to the amount of ten per cent. or more on the dollar, the bank or banks owning said stocks shall be required to make up said deficiency by additional stocks.

Third. The stockholders in any corporation and joint association for banking purposes issuing bank notes shall be individually liable, in an amount equal to double the amount of stock owned by them, for all the debts of such corporation or association; and such individual liability shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.

Fourth. In case of the insolvency of any bank or banking association the bill holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

Fifth. Any general banking law which may be passed in accordance with this article shall provide for recording the names of all stockholders in such corporations, the amount of stock held by each, the time of transfer, and by whom transferred.

ARTICLE TENTH.—*Of Corporations having no Banking Privileges.*

SECTION 1. The term "corporations," as used in this article, shall be construed to include all associations and joint stock companies having any of the powers and privileges not possessed by individuals or partnerships, except such as embrace banking privileges; and all corporations shall have the right to sue, and shall be liable to be sued, in all courts in like manner as natural persons.

SEC 2. No corporation shall be formed under special acts except for municipal purposes.

SEC. 3. Each stockholder in any corporation shall be liable to the amount of the stock held or owned by him.

SEC. 4. Lands may be taken for public way for the purpose of granting to any corporation the franchise of way for public use. In all cases, however, a fair and equitable compensation shall be paid for such land, and the damages arising from the taking of the same; but all corporations, being common carriers, enjoying the right of way in pursuance of the provisions of this section, shall be bound to carry the mineral, agricultural, and other productions or manufactures on equal and reasonable terms.

ARTICLE ELEVENTH.—*Counties and Townships.*

SECTION 1. The legislature may, from time to time, establish and organize new counties; but no new county shall contain less than four hundred square miles; nor shall any county be reduced below that amount; and all laws changing county lines in counties already organized, or for removing county seats, shall, before taking effect, be submitted to the electors of the county or counties to be affected thereby at the next general election after the passage thereof, and be adopted by a majority of such electors. Counties now established may be enlarged, but not reduced below four hundred (400) square miles.

SEC. 2. The legislature may organize any city into a separate county when it has attained a population of twenty thousand inhabitants, without reference to geographical extent, when a majority of the electors of the county in which such city may be situated, voting thereon, shall be in favor of a separate organization.

SEC. 3. Laws may be passed providing for the organization for municipal and other town purposes of any congressional or fractional townships in the several counties in the State, provided that when a township is divided by county lines, or does not contain one hundred inhabitants, it may be attached to one or more adjoining townships or parts of townships for the purposes aforesaid.

SEC. 4. Provision shall be made by law for the election of such county or township officers as may be necessary.

SEC. 5. Any county and township organization shall have such powers of local taxation as may be prescribed by law.

SEC. 6. No money shall be drawn from any county or township treasury, except by authority of law.

ARTICLE TWELFTH.—*Of the Militia.*

SECTION 1. It shall be the duty of the legislative assembly to pass such laws for the organization, discipline, and service of the militia of the State as may be deemed necessary.

ARTICLE THIRTEENTH.—*Impeachment and removal from office.*

SECTION 1. The governor, secretary of state, treasurer, auditor, attorney general, and the judges of the supreme and district courts,

may be impeached for corrupt conduct in office, or for crimes and misdemeanors; but judgment in such cases shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit in this State. The party convicted thereof shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SEC. 2. The legislature of this State may provide for the removal of inferior officers from office for malfeasance or nonfeasance in the performance of their duties.

SEC. 3. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

SEC. 4. On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court.

SEC. 5. No person shall be tried on impeachment before he shall have been served with a copy thereof at least twenty days previous to the day set for trial.

ARTICLE FOURTEENTH.—*Amendments to the Constitution.*

SECTION 1. Whenever a majority of both houses of the legislature shall deem it necessary to alter or amend this constitution, they may propose such alterations or amendments, which proposed amendments shall be published with the laws which have been passed at the same session, and said amendments shall be submitted to the people for their approval or rejection; and if it shall appear in a manner to be provided by law that a majority of the voters present, and voting, shall have ratified such alterations or amendments, the same shall be valid, to all intents and purposes, as a part of this constitution. If two or more alterations or amendments shall be submitted at the same time, it shall be so regulated that the voters shall vote for or against each separately.

SEC. 2. Whenever two-thirds of the members elected to each branch of the legislature shall think it necessary to call a convention to revise this constitution, they shall recommend to the electors to vote at the next election for members of the legislature, for or against a convention; and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall, at their next session, provide by law for calling the same. The convention shall consist of as many members as the house of representatives, who shall be chosen in the same manner, and shall meet within three months after their election for the purpose aforesaid.

ARTICLE FIFTEENTH.—*Miscellaneous subjects.*

SECTION 1. The seat of government of the State shall be at the city of Saint Paul, but the legislature, at their first or any future session, may provide by law for a change of the seat of government by a vote of the people, or may locate the same upon the land granted by Congress for a seat of government to the State; and in the event of the seat of government being removed from the city of Saint Paul to any other place in the State, the capitol building and grounds shall be dedicated to an

institution for the promotion of science, literature, and the arts, to be organized by the legislature of the State, and of which institution the Minnesota Historical Society shall always be a department.

SEC. 2. Persons residing on Indian lands within the State shall enjoy all the rights and privileges of citizens as though they lived in any portion of the State, and shall be subject to taxation.

SEC. 3. The legislature shall provide for a uniform oath or affirmation, to be administered at elections, and no person shall be compelled to take any other or different form of oath to entitle him to vote.

SEC. 4. There shall be a seal of the State, which shall be kept by the secretary of state, and be used by him officially, and shall be called the great seal of the State of Minnesota, and shall be attached to all official acts of the governor, (his signature to acts and resolves of the legislature excepted,) requiring authentication. The legislature shall provide for an appropriate device and motto for said seal.

SEC. 5. The territorial prison, as located under existing laws, shall, after the adoption of the constitution, be and remain one of the State prisons of the State of Minnesota.

ARTICLE SIXTEENTH.—*Schedule.*

SECTION 1. That no inconvenience may arise by reason of a change from a territorial to a permanent State government, it is declared that all rights, actions, prosecutions, judgments, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if no change had taken place; and all process which may be issued under the authority of the Territory of Minnesota previous to its admission into the Union of the United States, shall be as valid as if issued in the name of the State.

SEC. 2. All laws now in force in the Territory of Minnesota, not repugnant to this constitution, shall remain in force until they expire by their own limitation, or be altered or repealed by the legislature.

SEC. 3. All fines, penalties, or forfeitures accruing to the Territory of Minnesota shall inure to the State.

SEC. 4. All recognizances heretofore taken, or which may be taken before the change from territorial to permanent State government, shall remain valid, and shall pass to, and may be prosecuted in the name of, the State; and all bonds executed to the governor of the Territory, or to any other officer or court in his or their official capacity, shall pass to the governor or State authority, and their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly; and all the estate of property, real, personal, or mixed, and all judgments, bonds, specialities, choses in action, and claims and debts of whatever description, of the Territory of Minnesota, shall inure to and vest in the State of Minnesota, and may be sued for and recovered in the same manner and to the same extent by the State of Minnesota as the same could have been by the Territory of Minnesota. All criminal prosecutions and penal actions which may have arisen, or which may arise before the change from a territorial to a State government, and which shall then be pending, shall be prosecuted to judgment and

execution in the name of the State. All offences committed against the laws of the Territory of Minnesota before the change from a territorial to a State government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the authority of the State of Minnesota with like effect as though such change had not taken place, and all penalties incurred shall remain the same as if this constitution had not been adopted. All actions at law and suits in equity which may be pending in any of the courts of the Territory of Minnesota at the time of the change from a territorial to a State government may be continued and transferred to any court of the State which shall have jurisdiction of the subject-matter thereof.

SEC. 5. All territorial officers, civil and military, now holding their offices under the authority of the United States or of the Territory of Minnesota, shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the State.

SEC. 6. The first session of the legislature of the State of Minnesota shall commence on the first Monday of December next, and shall be held at the capitol, in the city of Saint Paul.

SEC. 7. The laws regulating the election and qualification of all district, county, and precinct officers shall continue and be in force until the legislature shall otherwise provide by law.

SEC. 8. The president of the convention shall, immediately after the adjournment thereof, cause this constitution to be deposited in the office of the governor of the Territory; and if, after the submission of the same to a vote of the people, as hereinafter provided, it shall appear that it has been adopted by a vote of the people of the State, then the governor shall forward a certified copy of the same, together with an abstract of the votes polled for and against said constitution, to the President of the United States, to be by him laid before the Congress of the United States.

SEC. 9. For the purposes of the first election, the State shall constitute one district, and shall elect three members to the House of Representatives of the United States.

SEC. 10. For the purposes of the first election for members of the State senate and the house of representatives the State shall be divided into senatorial and representative districts, as follows, viz: First district, Washington county; second district, Ramsey county; third district, Dakota county; fourth district, so much of Hennepin county as lies west of the Mississippi; fifth district, Rice county; sixth district, Goodhue county; seventh district, Scott county; eighth district, Olmstead county; ninth district, Fillmore county; tenth district, Houston county; eleventh district, Winona county; twelfth district, Wabashaw county; thirteenth district, Mower and Dodge counties; fourteenth district, Freeborn and Faribault counties; fifteenth district, Steel and Waseca counties; sixteenth district, Blue Earth and Le Sueur counties; seventeenth district, Nicollet and Brown counties; eighteenth district, Sibley, Renville, and McLeod counties; nineteenth district, Carver and Wright counties; twentieth district, Benton, Stearns, and Meeker counties; twenty-first district, Morrison, Crow Wing, and Mille Lac counties, twenty-second district, Cass,

Pembina and Todd counties; twenty-third district, so much of Hennepin county as lies east of the Mississippi river; twenty-fourth district, Sherburne, Anoka, and Manomin counties; twenty-fifth district, Chisago, Pine, and Isanti counties; twenty-sixth district, Buchanan, Carlton, St. Louis, Lake, and Itaska counties.

SEC. 11. The counties of Brown, Stearns, Todd, Cass, Pembina, and Renville, as applied in the preceding section, shall not be deemed to include any territory west of the State line, but shall be deemed to include all counties and parts of counties east of said line as were created out of the territory of either, at the last session of the legislature.

SEC. 12. The senators and representatives at the first election shall be apportioned among the several senatorial and representative districts as follows, to wit:

1st	district	2	senators,	3	representatives.
2d	"	3	"	6	"
3d	"	2	"	5	"
4th	"	2	"	4	"
5th	"	2	"	3	"
6th	"	1	"	4	"
7th	"	1	"	3	"
8th	"	2	"	4	"
9th	"	2	"	6	"
10th	"	2	"	3	"
11th	"	2	"	4	"
12th	"	1	"	3	"
13th	"	2	"	3	"
14th	"	1	"	3	"
15th	"	1	"	4	"
16th	"	1	"	3	"
17th	"	1	"	3	"
18th	"	1	"	3	"
19th	"	1	"	3	"
20th	"	1	"	3	"
21st	"	1	"	1	"
22d	"	1	"	1	"
23d	"	1	"	2	"
24th	"	1	"	1	"
25th	"	1	"	1	"
26th	"	1	"	1	"
		37		80	

SEC. 13. The returns from the 22d district shall be made to, and canvassed by, the judges of election at the precinct of Otter Tail city.

SEC. 14. Until the legislature shall otherwise provide, the State shall be divided into judicial districts, as follows, viz.

The counties of Washington, Chisago, Manomin, Anoka, Isanti, Pine, Buchanan, Carlton, St. Louis, and Lake, shall constitute the first judical district.

The county of Ramsey shall constitute the second judicial district.

The counties of Houston, Winona, Fillmore, Olmstead, and Wabashaw, shall constitute the third judicial district.

The counties of Hennepin, Carver, Wright, Meeker, Sherburne, Benton, Stearns, Morrison, Crow Wing, Mille Lac, Itaska, Pembina, Todd, and Cass, shall constitute the fourth judicial district.

The counties of Dakota, Goodhue, Scott, Rice, Steele, Waseca, Dodge, Mower, and Freeborn, shall constitute the fifth judicial district.

The counties of Le Sueur, Sibley, Nicollet, Blue Earth, Faribault, McLeod, Renville, Brown, and all other counties in the State not included within the other districts, shall constitute the sixth judicial district.

SEC. 15. Each of the foregoing enumerated judicial districts may, at the first election, elect one prosecuting attorney for the district.

SEC. 16. Upon the second Tuesday, the 13th day of October, 1857, an election shall be held for members of the House of Representatives of the United States, governor, lieutenant governor, supreme and district judges, members of the legislature, and all other officers designated in this constitution, and also for the submission of this constitution to the people for their adoption or rejection.

SEC. 17. Upon the day so designated as aforesaid, every free white male inhabitant over the age of twenty-one years, who shall have resided within the limits of the State for ten days previous to the day of said election, may vote for all officers to be elected under this constitution at such election, and also for or against the adoption of this constitution.

SEC. 18. In voting for or against the adoption of this constitution, the words "for constitution" or "against constitution" may be written or printed on the ticket of each voter; but no voter shall vote for or against this constitution on a separate ballot fro n that cast by him for officers to be elected at said election under this constitution; and if, upon the canvass of the votes so polled, it shall appear that there was a greater number of votes polled for than against said constitution, then this constitution shall be deemed to be adopted as the constitution of the State of Minnesota; and all the provisions and obligations of this constitution, and of the schedule hereunto attached, shall thereafter be valid, to all intents and purposes, as the constitution of said State.

SEC. 19. At said election the polls shall be opened, the election held, returns made, and certificates issued, in all respects as provided by law for opening, closing, and conducting elections, and making returns of the same, except as hereinbefore specified, and excepting, also, that polls may be opened and elections held, at any point or points in any of the counties where precincts may be established as provided by law, ten days previous to the day of election, not less than ten miles from the place of voting in any established precinct.

SEC. 20. It shall be the duty of the judges and clerks of election, in addition to the returns required by law from each precinct, to forward to the secretary of the Territory by mail, immediately after the close of the election, a certified copy of the poll-book containing the name of each person who has voted in the precinct, and the number

of votes polled for each person for any office, and the votes polled for or against the adoption of the constitution.

SEC. 21. The returns of said election for and against this constitution, and for all State officers and members of the House of Representatives of the United States, shall be made and certificates issued in the manner now prescribed by law for returning votes given for delegate to Congress; and the returns for all district officers, judicial, legislative, or otherwise, shall be made to the register of deeds of the senior county in each district in the manner prescribed by law, except as otherwise provided. The returns for all officers elected at large shall be canvassed by the governor of the Territory, assisted by Joseph R. Brown and Thomas J. Galbraith, at the time designated by law for canvassing the vote for delegate to Congress.

SEC. 22. If, upon canvassing the vote for and against the adoption of this constitution, it shall appear that there has been polled a greater number of votes against than for it, then no certificates of election shall be issued for any State or district officer provided for in this constitution, and no State organization shall have validity within the limits of the Territory until otherwise provided for, and until a constitution for a State government shall have been adopted by the people.

ST. A. D. BALCOMBE,
President of the Constitutional Convention.

Benj. C. Baldwin,
D. M. Hall,
Robert Lyle,
S. H. Kemp,
William F. Russell,
N. B. Robbins, jr.,
Simeon Harding,
W. H. C. Folsom,
Wentworth Hayden,
D. L. King,
T. D Smith,
Edwin Page Davis,
Thomas Wilson,
E. N. Bates,
John H. Murphy,
Thomas Bolles,
D. D. Dickerson,
Thomas Foster,
Lewis M'Kune,
W. J. Duley,
R. L. Bartholomew,
N. P. Colburn,
H. A. Billings,
Aaron G. Hudson,
Charles Gerrish,
Frank Mantor,
Amos Coggswell,
Joseph Peckham,
George Watson,
Charles F. Low,
P. A. Cedarstam,
Charles B. Sheldon,
David Morgan,
James A. McCan,
John A. Anderson,
A. H. Butler,
Charles Hanson,
Charles A. Coe,
David A. Secombe,
John Cleghorn,
Alanson B. Vaughn,
Henry Eschle,
Cyrus Aldrich,
F. Ayer,
Albert W. Coombs,
Thomas J. Galbraith,
H. W. Holley,
B. E. Messer,
W. H. Mills,
John W. North,
Oscar F. Perkins,
Samuel W. Putnam,
L. K. Stannard,
C. W. Thompson,

Chas. McClure, L. C. Walker,
Boyd Phelps, Philip Winel.

Attest:

L. A. BABCOCK,
Secretary of the Constitutional Convention.

[The same constitution, according to the report of the conference committee, was adopted by the Democratic convention, and verified in the following manner:]

HENRY H. SIBLEY, of Dakota county,
President of the Constitutional Convention of Minnesota.

William Holcombe, of Washington county.
James S. Norris, do.
Henry N. Setzer, do.
Gold T. Curtis, do.
Newington Gilbert, do.
Charles J. Butler, do.
R. H. Sanderson, do.
George L. Becker, of Ramsey county.
Moses Sherburne, do.
Lafayette Emmet, do.
William P. Murray, do.
W. A. Gorman, do.
Jno. S. Prince, do.
Patrick Nash, do.
William B. McGrorty do.
Paul Faber, do.
Michael E. Ames, do.
B. B. Meeker, of Hennepin county.
Charles L. Chase, do.
Calvin A. Tuttle, do.
Wm. M Lashells, do.
Edwin C. Stacey, of Freeborn county.
David Gilman, of Benton county.
H. C. Wait, of Stearns county.
J. C. Shepley, do
Jno. W. Tenvoorde, do
Wm. Sturgis, of Morrison county.
W. W. Kingsbury, of St. Louis county.
R. H. Barrett, do
Robert Kennedy, of Scott county.
Frank Warner, do
Wm. A. Davis, do
Daniel J. Burns, of Dakota county.
Josiah Burwell, do
Henry G. Bailey, do
Andrew Keegan, do
James McFetridge, of Pembina county.
J. Jerome, do
Xavier Cantell, do
Joseph Rolette, do

Louis Vasseur, of Pembina county.
James C. Day, of Houston county.
O. W. Streeter, do
Thos. H. Armstrong, of Mower county.
Joseph R. Brown, of Sibley county.
C. E. Flandrau, of Nicollett county.
Francis Baasen, of Brown county.
Wm. B. McMahan, of Blue Earth county.
J. H. Swan, of Le Sueur county.
Alfred E. Ames, of Hennepin county.

Attest: J. J. HOAH,
Secretary of the Constitutional Convention.

D.

MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES,

COMMUNICATING

A copy of the Constitution of Minnesota.

JANUARY 11, 1858.—Referred to the Committee on Territories, and ordered to be printed.

To the Senate and House of Representatives of the United States:

I have received from Samuel Medary, governor of the Territory of Minnesota, a copy of the constitution of Minnesota, "together with an abstract of the votes polled for and against said constitution," at the election held in that Territory on the second Tuesday of October last, certified by the governor in due form, which I now lay before Congress in the manner prescribed by that instrument.

Having received but a single copy of the constitution, I transmit this to the Senate.

JAMES BUCHANAN.

WASHINGTON, *January* 11, 1858.

EXECUTIVE OFFICE, ST. PAUL, MINNESOTA,
December 22, 1857.

SIR: I hereby have the honor to transmit an official copy of the constitution, now on file in this office, adopted by a vote of the people of the Territory of Minnesota, on the 13th day of October, 1857, for their future government as a State.

Very respectfully,

S. MEDARY.

His Excellency JAMES BUCHANAN,
President of the United States.

An abstract of the votes polled for and against the State constitution.

Names of counties.	Constitution.	
	For.	Against.
Rice	1,798	14
Waseca	509	34
Steele	613	69
Wabashaw	583	10
Winona	1,362	8
Faribault	219	2
Freeborn	635	3
Sherburne	94	.....
Anoka	477	10
Houston	1,188	8
Nicollet	.....	.....
Le Sueur	819	87
Ramsey	2,567	4
Hennepin	3,662	70
Goodhue	1,810	12
Olmstead	1,343	11
Washington	1,662	25
Fillmore	1,874	60
Scott	943	9
Dodge	.....	.....
Mower	639	14
Carver	845	5
Wright	605	52
Stearns	354	14
Benton	295	3
Dakota	2,010	6
Sibley	663	10
Brown	488	.....
Blue Earth	.....	.....
McLeod	206	.....
Morrison	304	9
Mille Lac	11	9
Crow Wing	96	1
Pembina	313	.....
Cass	.....	.....
Todd	102	11
Pine	50	.....
Manomin	113	.....
Meeker	194	1
Chisago	600	.....
Isanti	19	.....
Total	30,055	571

EXECUTIVE OFFICE, MINNESOTA,
St. Paul, Dec. 22, 1857,

I hereby certify that the foregoing is a true abstract of the votes polled for and against the constitution of Minnesota at the election held on the 13th day of October, A. D. 1857, as declared by the board of canvassers.

S. MEDARY.

NOTE.—There were returned, in addition to the above, 6,451 votes for and 132 votes against the constitution which were rejected by the canvassers, being informally returned. This includes the counties in the foregoing table left blank.

THE CONSTITUTION OF THE STATE OF MINNESOTA.

Adopted in convention on Friday, August 29, 1857.
Signed by the officers and members of the convention August 30, 1857.

PREAMBLE.

We, the people of the State of Minnesota, grateful to God for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and our posterity, do ordain and establish this constitution.

ARTICLE FIRST.—*Bill of Rights.*

SECTION 1. Government is instituted for the security, benefit, and protection of the people, in whom all political power is inherent, together with the right to alter, modify, or reform such government whenever the public good may require it.

SEC. 2. No member of this State shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the State, otherwise than in the punishment of crime whereof the party shall have been duly convicted.

SEC. 3. The liberty of the press shall forever remain inviolate, and all persons may freely speak, write, and publish their sentiments on all subjects, being responsible for the abuse of such right.

SEC. 4. The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases, in the manner prescribed by law.

SEC. 5. Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel or unusual punishments be inflicted.

SEC. 6. In all criminal prosecutions the accused shall enjoy the right to a speedy public trial by an impartial jury of the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defence.

SEC. 7. No person shall be held to answer for a criminal offence, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or navy, or in the militia when in actual service in time of war or public danger; and no person for the same offence shall be put twice in jeopardy of punishment, nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law. All

cept for capital offences, when the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless, when in cases of rebellion or invasion, the public safety may require.

SEC. 8. Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely and without purchase; completely, and without denial; promptly, and without delay, conformably to the laws.

SEC. 9. Treason against the State shall consist only in levying war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

SEC. 10. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

SEC. 11. No bill of attainder, *ex post facto* law, nor any law impairing the obligation of contracts shall ever be passed, and no conviction shall work corruption of blood or forfeiture of estate.

SEC. 12. No person shall be imprisoned for debt in this State; but this shall not prevent the legislature from providing for imprisonment or holding to bail persons charged with fraud in contracting said debt. A reasonable amount of property shall be exempt from seizure or sale for the payment of any debt or liability; the amount of such exemption shall be determined by law.

SEC. 13. Private property shall not be taken for public use without just compensation therefor first paid and secured.

SEC. 14. The military shall be subordinate to the civil power, and no standing army shall be kept up in this State in time of peace.

SEC. 15. All lands within this State are declared to be allodial, and feudal tenures of every description, with all their incidents, are prohibited. Leases and grants of agricultural land for a longer period than twenty-one years, hereafter made, in which shall be reserved any rent or service of any kind, shall be void.

SEC. 16. The enumeration of rights in this constitution shall not be construed to deny or impair others retained by, and inherent in, the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect, or support, any place of worship, or to maintain any religious or ecclesiastical ministry against his consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the State; nor shall any money be drawn from the treasury for the benefit of any religious societies, or religious or theological seminaries.

SEC. 17. No religious test or amount of property shall ever be required as a qualification for any office of public trust under the State. No religious test or amount of property shall ever be required as a qualification of any voter at any election in this State; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion.

ARTICLE SECOND.—*On name and boundaries.*

SECTION 1. This State shall be called and known by the name of the State of Minnesota, and shall consist of, and have jurisdiction over, the territory embraced in the following boundaries, to wit: Beginning at the point in the centre of the main channel of the Red River of the North, where the boundary line between the United States and the British possessions crosses the same; thence up the main channel of said river to that of the Bois des Sioux river; thence up the main channel of said river to Lake Traverse; thence up the centre of said lake to the southern extremity thereof; thence in a direct line to the head of Big Stone lake; thence through its centre to its outlet; thence by a due south line to the north line of the State of Iowa; thence east along the northern boundary of said State to the main channel of the Mississippi river; thence up the main channel of said river, and following the boundary line of the State of Wisconsin, until the same intersects the St. Louis river; thence down the said river to and through Lake Superior, on the boundary line of Wisconsin and Michigan, until it intersects the dividing line between the United States and the British possessions; thence up Pigeon river, and following said dividing line to the place of beginning.

SEC. 2. The State of Minnesota shall have concurrent jurisdiction on the Mississippi, and all other rivers and waters bordering on the said State of Minnesota, so far as the same shall form a common boundary to said State, and any other State or States now or hereafter to be formed by the same; and said river and waters, and navigable waters leading into the same, shall be common highways, and forever free, as well to the inhabitants of said State as to other citizens of the United States, without any tax, duty, impost, or toll therefor.

SEC. 3. The propositions contained in the act of Congress entitled "An act to authorize the people of the Territory of Minnesota to form a constitution and State government preparatory to their admission into the Union on an equal footing with the original States" are hereby accepted, ratified, and confirmed, and shall remain irrevocable without the consent of the United States; and it is hereby ordained that this State shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations Congress may find necessary for securing the title to said soil to *bona fide* purchasers thereof; and no tax shall be imposed on lands belonging to the United States, and in no case shall non-resident proprietors be taxed higher than residents.

ARTICLE THIRD.—*Distribution of the Powers of Government.*

SECTION 1. The powers of the government shall be divided into three distinct departments, the legislative, executive, and judicial;

and no person or persons belonging to or constituting one of the departments shall exercise any of the powers properly belonging to either of the others, except in the instances expressly provided in this constitution.

ARTICLE FOURTH.—*Legislative Department.*

SECTION 1. The legislature of the State shall consist of a senate and house of representatives, who shall meet at the seat of government of the State at such times as shall be prescribed by law.

SEC. 2. The number of members who compose the senate and house of representatives shall be prescribed by law; but the representation in the senate shall never exceed one member for every five thousand inhabitants, and in the house of representatives one member for every two thousand inhabitants. The representation in both houses shall be apportioned equally throughout the different sections of the State in proportion to the population thereof, exclusive of Indians not taxable under the provisions of law.

SEC. 3. Each house shall be the judge of the election returns and eligibility of its own members; a majority of each shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as it may provide.

SEC. 4. Each house may determine the rules of its proceedings, sit upon its own adjournment, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member; but no member shall be expelled a second time for the same offence.

SEC. 5. The house of representatives shall elect its presiding officer, and the senate and house of representatives shall elect such other officers as may be provided by law; they shall keep journals of their proceedings, and from time to time publish the same; and the yeas and nays, when taken on any question, shall be entered on such journals.

SEC. 6. Neither house shall, during a session of the legislature, adjourn for more than three days, (Sundays excepted,) nor to any other place than that in which the two houses shall be assembled, without the consent of the other house.

SEC. 7. The compensation of senators and representatives shall be three dollars per diem, during the first session, but may afterwards be prescribed by law. But no increase of compensation shall be prescribed which shall take effect during the period for which the members of the existing house of representatives may have been elected.

SEC. 8. The members of each house shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during the session of their respective houses, and in going to or returning from the same. For any speech or debate in either house they shall not be questioned in any other place.

SEC. 9. No senator or representative shall, during the time for which he is elected, hold any office under the authority of the United States or of the State of Minnesota, except that of postmaster; and no senator or representative shall hold an office under the State which had

been created, or the emoluments of which had been increased, during the session of the legislature of which he was a member until one year after the expiration of his term of office in the legislature.

SEC. 10. All bills for raising revenue shall originate in the house of representatives, but the senate may propose and concur with amendments, as on other bills.

SEC. 11. Every bill which shall have passed the senate and house of representatives, in conformity to the rules of each house, and the joint rules of the two houses, shall, before it becomes a law, be presented to the governor of the State. If he approve, he shall sign and deposit it in the office of the secretary of state for preservation, and notify the house where it originated of the fact. But if not, he shall return it with his objections to the house in which it shall have originated, when such objections shall be entered at large on the journal of the same, and the house shall proceed to reconsider the bill. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each house, respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature, by adjournment within that time, prevent its return, in which case it shall not be a law. The governor may approve, sign, and file in the office of the secretary of state, within three days after the adjournment of the legislature, any act passed during the three last days of the session, and the same shall become a law.

SEC. 12. No money shall be appropriated except by bill. Every order, resolution, or vote requiring the concurrence of the two houses, (except such as relate to the business or adjournment of the same,) shall be presented to the governor for his signature, and before the same shall take effect shall be approved by him, or being returned by him with his objections, shall be repassed by two-thirds of the members of the two houses, according to the rules and limitations prescribed in case of a bill.

SEC. 13 The style of all laws of this State shall be: "Be it enacted by the legislature of the State of Minnesota." No law shall be passed unless voted for by a majority of all the members elected to each branch of the legislature, and the vote entered upon the journal of each house.

SEC. 14. The house of representatives shall have the sole power of impeachment, through a concurrence of a majority of all the members elected to seats therein. All impeachments shall be tried by the Senate, and when sitting for that purpose the senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the members present.

SEC. 15. The legislature shall have full power to exclude from the

privilege of electing, or being elected, any person convicted of bribery, perjury, or any other infamous crime.

SEC. 16. Two or more members of either house shall have liberty to dissent and protest against any act or resolution which they may think injurious to the public or to any individual, and have the reason of their dissent entered on the journal.

SEC. 17. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature. The legislature shall prescribe by law the manner in which evidence in cases of contested seats in either house shall be taken.

SEC. 18. Each house may punish by imprisonment, during its session, any person not a member who shall be guilty of any disorderly or contemptuous behavior in their presence, but no such imprisonment shall at any time exceed twenty-four hours.

SEC. 19. Each house shall be open to the public during the sessions thereof, except in such cases as in their opinion may require secresy.

SEC. 20. Every bill shall be read on three different days in each separate house, unless, in case of urgency, two-thirds of the house where such bill is pending shall deem it expedient to dispense with this rule, and no bill shall be passed by either house until it shall have been previously read twice at length.

SEC. 21. Every bill having passed both houses shall be carefully enrolled, and shall be signed by the presiding officer of each house. Any presiding officer refusing to sign a bill which shall have previously passed both houses shall hereafter be incapable of holding a seat in either branch of the legislative assembly, or hold any other office of honor or profit in the State, and in case of such refusal, each house shall, by rule, provide the manner in which such bill shall be properly certified for presentation to the governor.

SEC. 22. No bill shall be passed by either house of the legislature upon the day prescribed for the adjournment of the two houses. But this section shall not be so construed as to preclude the enrollment of a bill, or the signature and passage from one house to the other, or the reports thereon from committees, or its transmission to the executive for his signature.

SEC. 23. The legislature shall provide by law for an enumeration of the inhabitants of this State in the year 1865, and every tenth year thereafter. At their first session after each enumeration so made, and also at their first session after each enumeration made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional senatorial and representative districts, and to apportion anew the senators and representatives among the several districts, according to the provisions of section second of this article.

SEC. 24. The senators shall also be chosen by single districts of convenient contiguous territory, at the same time that the members of the house of representatives are required to be chosen, and in the same manner, and no representative district shall be divided in the formation of a senate district. The senate districts shall be numbered in regular series, and the senators chosen by the districts designated by odd numbers shall go out of office at the expiration of the first year,

and the senators chosen by the districts designated by even numbers shall go out of office at the expiration of the second year; and thereafter the senators shall be chosen for the term of two years, except there shall be an entire new election of all the senators at the election next succeeding each new apportionment provided for in this article.

SEC. 25. Senators and representatives shall be qualified voters of the State, and shall have resided one year in the State, and six months immediately preceding the election in the district from which they are elected.

SEC. 26. Members of the Senate of the United States from this State shall be elected by the two houses of the legislature, in joint convention, at such times and in such manner as may be provided by law.

SEC. 27. No law shall embrace more than one subject, which shall be expressed in its title.

SEC. 28. Divorces shall not be granted by the legislature.

SEC. 29. All members and officers of both branches of the legislature shall, before entering upon the duties of their respective trusts, take and subscribe an oath or affirmation to support the Constitution of the United States, the constitution of the State of Minnesota, and faithfully and impartially to discharge the duties devolving upon him as such member or officer.

SEC. 30. In all elections to be made by the legislature, the members thereof shall vote *viva voce*, and their votes shall be entered on the journal.

SEC. 31. The legislature shall never authorize any lottery or the sale of lottery tickets.

ARTICLE FIFTH.—*Executive Department.*

SECTION 1. The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor, treasurer, and attorney general, who shall be chosen by the electors of the State.

SEC. 2. The returns of every election, for the officers named in the foregoing section, shall be made to the secretary of state, and by him transmitted to the Speaker of the house of representatives, who shall cause the same to be opened and canvassed before both houses of the legislature, and the result declared within three days after each house shall be organized.

SEC. 3 The term of office for the governor and lieutenant governor shall be two years, and until their successors are chosen and qualified. Each shall have attained the age of twenty-five years, and shall have been a *bona fide* resident of the State for one year next preceding his election. Both shall be citizens of the United States.

SEC. 4. The governor shall communicate, by message, to each session of the legislature such information touching the state and condition of the country as he may deem expedient. He shall be commander-in-chief of the military and naval forces, and may call out such forces to execute the laws, to suppress insurrection and to repel invasion. He may require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating

to the duties of their respective offices; and he shall have power to grant reprieves and pardons after conviction for offences against the State, except in cases of impeachment. He shall have power, by and with the advice and consent of the senate, to appoint a State librarian and notaries public, and such other officers as may be provided by law. He shall have power to appoint commissioners to take the acknowledgement of deeds, or other instruments in writing, to be used in the State. He shall have a negative upon all laws passed by the legislature, under such rules and limitations as are in this constitution prescribed. He may, on extraordinary occasions, convene both houses of the legislature. He shall take care that the laws be faithfully executed, fill any vacancy that may occur in the office of secretary of state, treasurer, auditor, attorney general, and such other State and district offices as may be hereafter created by law until the next annual election, and until their successors are chosen and qualified.

SEC. 5. The official term of the secretary of state, treasurer, and attorney general shall be two years; the official term of the auditor shall be three years, and each shall continue in office until his successor shall have been elected and qualified. The governor's salary for the first term under this constitution shall be $2,500 per annum. The salary of the secretary of state for the first term shall be $1,500 per annum. The auditor, treasurer, and attorney general, shall each, for the first term, receive a salary of $1,000 per annum. And the further duties and salaries of said executive officers shall each thereafter be prescribed by law.

SEC. 6. The lieutenant governor shall be *ex-officio* president of the senate, and in case a vacancy should occur, from any cause whatever, in the office of governor, he shall be governor during such vacancy. The compensation of lieutenant governor shall be double the compensation of a State senator. Before the close of each session of the senate they shall elect a president *pro tempore*, who shall be lieutenant governor in case a vacancy should occur in that office.

SEC. 7. The term of each of the executive officers named in this article shall commence upon taking the oath of office after the State shall be admitted by Congress into the Union, and continue until the first Monday in January, 1860, except the auditor, who shall continue in office until the first Monday in January, 1861, and until their successors shall have been duly elected and qualified.

SEC. 8. Each officer created by this article shall, before entering upon his duties, take an oath or affirmation to support the Constitution of the United States, and of this State, and faithfully discharge the duties of his office to the best of his judgment and ability.

SEC. 9. Laws shall be passed at the first session of the legislature after the State is admitted into the Union to carry out the provisions of this article.

ARTICLE SIXTH—*Judiciary.*

SECTION 1. The judicial power of the State shall be vested in a supreme court, district courts, courts of probate, justices of the peace,

and such other courts inferior to the supreme court as the legislature may from time to time establish by a two-thirds vote.

SEC. 2. The supreme court shall consist of one chief justice and two associate justices, but the number of associate justices may be increased to a number not exceeding four by the legislature by a two-thirds vote, when it shall be deemed necessary. It shall have original jurisdiction in such remedial cases as may be prescribed by law, and appellate jurisdiction in all cases, both in law and equity, but there shall be no trial by jury in said court. It shall hold one or more terms in each year, as the legislature may direct, at the seat of government, and the legislature may provide by a two-thirds vote that one term in each shall be held in each or any judicial district. It shall be the duty of such court to appoint a reporter of its decisions. There shall be chosen by the qualified electors of the State one clerk of the supreme court, who shall hold his office for the term of three years, and until his successor is duly elected and qualified; and the judges of the supreme court, or a majority of them, shall have the power to fill any vacancy in the office of clerk of the supreme court until an election can be regularly had.

SEC. 3. The judges of the supreme court shall be elected by the electors of the State at large, and their term of office shall be seven years, and until their successors are elected and qualified.

SEC. 4. The State shall be divided by the legislature into six judicial districts, which shall be composed of contiguous territory, be bounded by county lines, and contain a population as nearly equal as may be practicable. In each judicial district one judge shall be elected by the electors thereof, who shall constitute said court, and whose term of office shall be seven years. Every district judge shall, at the time of his election, be a resident of the district for which he shall be elected, and shall reside therein during his continuance in office.

SEC. 5. The district courts shall have original jurisdiction in all civil cases, both in law and equity, where the amount in controversy exceeds one hundred dollars, and in all criminal cases where the punishment shall exceed three months' imprisonment, or a fine of more than one hundred dollars, and shall have such appellate jurisdiction as may be prescribed by law. The legislature may provide by law that the judge of one district may discharge the duties of the judge of any other district not his own, when convenience or the public interest may require it.

SEC. 6. The judges of the supreme and district courts shall be men learned in the law, and shall receive such compensation, at stated times, as may be prescribed by the legislature, which compensation shall not be diminished during their continuance in office, but they shall receive no other fee or reward for their services.

SEC. 7. There shall be established in each organized county in the State a probate court which shall be a court of record, and be held at such times and places as may be prescribed by law. It shall be held by one judge, who shall be elected by the voters of the county for the term of two years. He shall be a resident of such county at the time of his election, and reside therein during his continuance in office, and his compensation shall be provided by law. He may appoint his own

clerk, where none has been elected, but the legislature may authorize the election by the electors of any county of one clerk or register of probate for such county, whose powers, duties, term of office and compensation shall be prescribed by law. A probate court shall have jurisdiction over the estates of deceased persons and persons under guardianship, but no other jurisdiction, except as prescribed by this constitution.

SEC. 8. The legislature shall provide for the election a sufficient number of justices of the peace in each county, whose term of office shall be two years, and whose duties and compensation shall be prescribed by law; provided, that no justice of the peace shall have jurisdiction of any civil cause where the amount in controversy shall exceed one hundred dollars, nor in a criminal cause where the punishment shall exceed three months' imprisonment, or a fine of over one hundred dollars, nor in any cause involving the title to real estate.

SEC. 9. All judges other than those provided for in this constitution shall be elected by the electors of the judicial district, county or city, for which they shall be created, not for a longer term than seven years.

SEC. 10. In case the office of any judge shall become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor until a successor is elected and qualified. And such successor shall be elected at the first annual election that occurs more than thirty days after the vacancy shall have happened.

SEC. 11. The justices of the supreme court and the district courts shall hold no office under the United States, nor any other office under this State. And all votes for either of them for any elective office under this constitution, except a judicial office given by the legislature or the people, during their continuance in office, shall be void.

SEC. 12. The legislature may at any time change the number of judicial districts or their boundaries when it shall be deemed expedient, but no such change shall vacate the office of any judge.

SEC. 13. There shall be elected in each county where a district court shall be held one clerk of said court, whose qualifications, duties, and compensation shall be prescribed by law, and whose term of office shall be four years.

SEC. 14. Legal pleadings and proceedings in the courts of this State shall be under the direction of the legislature. The style of all process shall be "the State of Minnesota," and all indictments shall conclude "against the peace and dignity of the State of Minnesota."

SEC. 15. The legislature may provide for the election of one person in each organized county in this State, to be called a court commissioner, with judicial power and jurisdiction not exceeding the power and jurisdiction of a judge of the district court at chambers; or the legislature may, instead of such election, confer such power and jurisdiction upon judges of probate in the State.

ARTICLE SEVENTH.—*Elective Franchise.*

SECTION 1. Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the United States one year, and in this State for four months next preceding any election, shall be entitled to vote at such election, in the election district of which he shall at the time have been for ten days a resident, for all officers that now are or hereafter may be elective by the people:

1st. White citizens of the United States.

2d. White persons of foreign birth, who shall have declared their intention to become citizens, conformably to the laws of the United States upon the subject of naturalization.

3d. Persons of mixed white and Indian blood, who have adopted the customs and habits of civilization.

4th. Persons of Indian blood residing in this State, who have adopted the language, customs, and habits of civilization, after an examination before any district court of the State, in such manner as may be provided by law, and shall have been pronounced by said court capable of enjoying the rights of citizenship within the State.

SEC. 2. No person not belonging to one of the classes specified in the preceding section; no person who has been convicted of treason or any felony, unless restored to civil rights; and no person under guardianship, or who may be *non compos mentis*, or insane, shall be entitled or permitted to vote at any election in this State.

SEC. 3. For the purpose of voting, no person shall be deemed to have lost a residence by reason of his absence while employed in the service of the United States, nor while engaged upon the waters of this State or of the United States, nor while a student of any seminary of learning, nor while kept at any almshouse or other asylum, nor while confined in any public prison.

SEC. 4. No soldier, seaman, or marine in the army or navy of the United States shall be deemed a resident of this State in consequence of being stationed within the same.

SEC. 5. During the day on which any election shall be held, no person shall be arrested by virtue of any civil process.

SEC. 6. All elections shall be by ballot, except for such town officers as may be directed by law to be otherwise chosen.

SEC. 7. Every person who, by the provisions of this article, shall be entitled to vote at any election, shall be eligible to any office which now is, or hereafter shall be, elective by the people in the district wherein he shall have resided thirty days previous to such election, except as otherwise provided in this constitution, or the Constitution and laws of the United States.

ARTICLE EIGHTH.—*School Funds, Education, and Science.*

SECTION 1. The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature to establish a general and uniform system of public schools.

SEC. 2. The proceeds of such lands as are, or hereafter may be, granted by the United States for the use of schools within each township in this State shall remain a perpetual school fund to the State, and not more than one-third of said lands may be sold in two years, one-third in five years, and one-third in ten years; but the lands of the greatest valuation shall be sold first, provided that no portion of said lands shall be sold otherwise than at public sale. The principal of all funds arising from sales, or other disposition of lands or other property granted or entrusted to this State in each township for educational purposes, shall forever be preserved inviolate and undiminished; and the income arising from the lease or sale of said school lands shall be distributed to the different townships throughout the State, in proportion to the number of scholars in each township between the ages of five and twenty-one years, and shall be faithfully applied to the specific objects of the original grants or appropriations.

SEC. 3. The legislature shall make such provisions, by taxation or otherwise, as, with the income arising from the school fund, will secure a thorough and efficient system of public schools in each township in the State.

SEC. 4. The location of the University of Minnesota, as established by existing laws, is hereby confirmed, and said institution is hereby declared to be the University of the State of Minnesota. All the rights, immunities, franchises, and endowments heretofore granted or conferred are hereby perpetuated unto the said university; and all lands which may be granted hereafter by Congress, or other donations for said university purposes, shall vest in the institution referred to in this section.

ARTICLE NINTH.—*Finances of the State, and Banks and Banking.*

SECTION 1. All taxes to be raised in this State shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation, and be equalized and uniform throughout the State.

SEC. 2. The legislature shall provide for an annual tax sufficient to defray the estimated expenses of the State for each year; and whenever it shall happen that such ordinary expenses of the State for any year shall exceed the income of the State for such year, the legislature shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year, together with the estimated expenses of such ensuing year.

SEC. 3. Laws shall be passed taxing all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property, according to its true value in money; but public burying grounds, public school houses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches, church property used for religious purposes and houses of worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value $200 for each individual, shall by *general laws* be exempt from taxation.

SEC. 4. Laws shall be passed for taxing the notes and bills discounted, or purchase moneys loaned, and all other property, effects, or dues of every description, of all banks and of all bankers, so that all property employed in banking shall always be subject to a taxation equal to that imposed on the property of individuals.

SEC. 5. For the purpose of defraying extraordinary expenditures, the State may contract public debts; but such debts shall never, in the aggregate, exceed $250,000. Every such debt shall be authorized by law, for some single object, to be distinctly specified therein; and no such law shall take effect until it shall have been passed by the vote of two-thirds of the members of each branch of the legislature, to be recorded by yeas and nays on the journals of each house, respectively; and every such law shall levy a tax, annually, sufficient to pay the annual interest of such debt, and also a tax sufficient to pay the principal of such debt within ten years from the final passage of such law, and shall specially appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation and taxes shall not be repealed, postponed, or diminished, until the principal and interest of such debt shall have been wholly paid. The State shall never contract any debts for works of internal improvement, or be a party in carrying on such works, except in cases where grants of land or other property shall have been made to the State, especially dedicated by the grant to specific purposes; and in such cases the State shall devote thereto the avails of such grants, and may pledge or appropriate the revenues derived from such works in aid of their completion.

SEC. 6. All debts authorized by the preceding section shall be contracted by loan on State bonds of amounts not less than five hundred dollars each, on interest, payable within ten years after the final passage of the law authorizing such debt, and such bonds shall not be sold by the State under par. A correct registry of all such bonds shall be kept by the treasurer in numerical order, so as always to exhibit the number and amount unpaid, and to whom severally made payable.

SEC. 7. The State shall never contract any public debt, unless in time of war to repel invasion, or suppress insurrection, except in the cases and in the manner provided in the fifth and sixth sections of this article.

SEC. 8. The money arising from any loan made, or debt or liability contracted, shall be applied to the object specified in the act authorizing such debt or liability, or to the repayment of such debt or liability, and to no other purpose whatever.

SEC. 9. No money shall ever be paid out of the treasury of this State except in pursuance of an appropriation by law.

SEC. 10. The credit of the State shall never be given or loaned in aid of any individual, association, or corporation.

SEC. 11. There shall be published by the treasurer, in at least one newspaper printed at the seat of government, during the first week in January of each year, and in the next volume of the acts of the legislature, detailed statements of all moneys drawn from the treasury during the preceding year; for what purposes, and to whom paid, and

by what law authorized; and also of all moneys received, and by what authority, and from whom.

SEC. 12. Suitable laws shall be passed by the legislature for the safe keeping, transfer, and disbursement of the State and school funds, and all officers and other persons charged with the same shall be required to give ample security for all moneys and funds of any kind, to keep an accurate entry of each sum received, and of each payment and transfer; and if any of said officers or other persons shall convert to his own use, in any form, or shall loan, with or without interest, contrary to law, or shall deposit in banks, or exchange for other fund, any portion of the funds of the State, every such act shall be adjudged to be an embezzlement of so much of the State funds as shall be thus taken, and shall be declared a felony; and any failure to pay over or produce the State or school funds intrusted to such persons on demand shall be held and taken to be *prima facie* evidence of such embezzlement.

SEC. 13. The legislature may, by a two-thirds vote, pass a general banking law, with the following restrictions and requirements, viz:

First. The legislature shall have no power to pass any law sanctioning, in any manner, directly or indirectly, the suspension of specie payments by any person, association, or corporation issuing bank notes of any description.

Second. The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require ample security, in United States stock or State stocks, for the redemption of the same in specie; and in case of a depreciation of said stocks, or any part thereof, to the amount of ten per cent. or more on the dollar, the bank or banks owning said stocks shall be required to make up said deficiency by additional stocks.

Third. The stockholders in any corporation and joint association for banking purposes issuing bank notes shall be individually liable, in an amount equal to double the amount of stock owned by them, for all the debts of such corporation or association; and such individual liability shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.

Fourth. In case of the insolvency of any bank or banking association the bill holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

Fifth. Any general banking law which may be passed in accordance with this article shall provide for recording the names of all stockholders in such corporations, the amount of stock held by each, the time of transfer, and by whom transferred.

ARTICLE TENTH.—*Of Corporations having no Banking Privileges.*

SECTION 1. The term "corporations," as used in this article, shall be construed to include all associations and joint stock companies having any of the powers and privileges not possessed by individuals or partnerships, except such as embrace banking privileges; and all corporations shall have the right to sue, and shall be liable to be sued, in all courts in like manner as natural persons.

SEC. 2. No corporation shall be formed under special acts except for municipal purposes.

SEC. 3. Each stockholder in any corporation shall be liable to the amount of the stock held or owned by him.

SEC. 4. Lands may be taken for public way for the purpose of granting to any corporation the franchise of way for public use. In all cases, however, a fair and equitable compensation shall be paid for such land, and the damages arising from the taking of the same; but all corporations, being common carriers, enjoying the right of way in pursuance of the provisions of this section, shall be bound to carry the mineral, agricultural, and other productions or manufactures on equal and reasonable terms.

ARTICLE ELEVENTH.—*Counties and Townships.*

SECTION 1. The legislature may, from time to time, establish and organize new counties; but no new county shall contain less than four hundred square miles; nor shall any county be reduced below that amount; and all laws changing county lines in counties already organized, or for removing county seats, shall, before taking effect, be submitted to the electors of the county or counties to be effected thereby at the next general election after the passage thereof, and be adopted by a majority of such electors. Counties now established may be enlarged, but not reduced below four hundred (400) square miles.

SEC. 2. The legislature may organize any city into a separate county when it has attained a population of twenty thousand inhabitants, without reference to geographical extent, when a majority of the electors of the county in which such city may be situated, voting thereon, shall be in favor of a separate organization.

SEC. 3. Laws may be passed providing for the organization for municipal and other town purposes of any congressional or fractional townships in the several counties in the State, provided that when a township is divided by county lines, or does not contain one hundred inhabitants, it may be attached to one or more adjoining townships or parts of townships for the purposes aforesaid.

SEC. 4. Provision shall be made by law for the election of such county or township officers as may be necessary.

SEC. 5. Any county and township organization shall have such powers of local taxation as may be prescribed by law.

SEC. 6. No money shall be drawn from any county or township treasury, except by authority of law.

ARTICLE TWELFTH.—*Of the Militia.*

SECTION 1. It shall be the duty of the legislature to pass such laws for the organization, discipline, and service of the militia of the State as may be deemed necessary.

ARTICLE THIRTEENTH.—*Impeachment and removal from office.*

SECTION 1. The governor, secretary of state, treasurer, auditor, attorney general, and the judges of the supreme and district courts,

may be impeached for corrupt conduct in office, or for crimes and misdemeanors; but judgment in such cases shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit in this State. The party convicted thereof shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SEC. 2. The legislature of this State may provide for the removal of inferior officers from office for malfeasance or nonfeasance in the performance of their duties.

SEC. 3. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

SEC. 4. On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court.

SEC. 5. No person shall be tried on impeachment before he shall have been served with a copy thereof at least twenty days previous to the day set for trial.

ARTICLE FOURTEENTH.—*Amendments to the Constitution.*

SECTION 1. Whenever a majority of both houses of the legislature shall deem it necessary to alter or amend this constitution, they may propose such alterations or amendments, which proposed amendments shall be published with the laws which have been passed at the same session, and said amendments shall be submitted to the people for their approval or rejection; and if it shall appear in a manner to be provided by law that a majority of the voters present, and voting, shall have ratified such alterations or amendments, the same shall be valid, to all intents and purposes, as a part of this constitution. If two or more alterations or amendments shall be submitted at the same time, it shall be so regulated that the voters shall vote for or against each separately.

SEC. 2. Whenever two-thirds of the members elected to each branch of the legislature shall think it necessary to call a convention to revise this constitution, they shall recommend to the electors to vote at the next election for members of the legislature, for or against a convention; and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall, at their next session, provide by law for calling the same. The convention shall consist of as many members as the house of representatives, who shall be chosen in the same manner, and shall meet within three months after their election for the purpose aforesaid.

ARTICLE FIFTEENTH.—*Miscellaneous subjects.*

SECTION 1. The seat of government of the State shall be at the city of Saint Paul, but the legislature, at their first or any future session, may provide by law for a change of the seat of government by a vote of the people, or may locate the same upon the land granted by Congress for a seat of government to the State; and in the event of the seat of government being removed from the city of Saint Paul to any other place in the State, the capitol building and grounds shall be dedicated to an

institution for the promotion of science, literature, and the arts, to be organized by the legislature of the State, and of which institution the Minnesota Historical Society shall always be a department.

SEC. 2. Persons residing on Indian lands within the State shall enjoy all the rights and privileges of citizens as though they lived in any portion of the State, and shall be subject to taxation.

SEC. 3. The legislature shall provide for a uniform oath or affirmation, to be administered at elections, and no person shall be compelled to take any other or different form of oath to entitle him to vote.

SEC. 4. There shall be a seal of the State, which shall be kept by the secretary of state, and be used by him officially, and shall be called the great seal of the State of Minnesota, and shall be attached to all official acts of the governor, (his signature to acts and resolves of the legislature excepted,) requiring authentication. The legislature shall provide for an appropriate device and motto for said seal.

SEC. 5. The territorial prison, as located under existing laws, shall, after the adoption of the constitution, be and remain one of the State prisons of the State of Minnesota.

ARTICLE SIXTEENTH.—*Schedule.*

SECTION 1. That no inconvenience may arise by reason of a change from a territorial to a permanent State government, it is declared that all rights, actions, prosecutions, judgments, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if no change had taken place: and all process which may be issued under the authority of the Territory of Minnesota previous to its admission into the Union of the United States, shall be as valid as if issued in the name of the State.

SEC. 2. All laws now in force in the Territory of Minnesota, not repugnant to this constitution, shall remain in force until they expire by their own limitation, or be altered or repealed by the legislature.

SEC. 3. All fines, penalties, or forfeitures accruing to the Territory of Minnesota shall inure to the State.

SEC. 4. All recognizances heretofore taken, or which may be taken before the change from territorial to permanent State government, shall remain valid, and shall pass to, and may be prosecuted in the name of, the State; and all bonds executed to the governor of the Territory, or to any other officer or court in his or their official capacity, shall pass to the governor or State authority, and their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly; and all the estate of property, real, personal, or mixed, and all judgments, bonds, specialities, choses in action, and claims and debts of whatever description, of the Territory of Minnesota, shall inure to and vest in the State of Minnesota, and may be sued for and recovered in the same manner and to the same extent by the State of Minnesota as the same could have been by the Territory of Minnesota. All criminal prosecutions and penal actions which may have arisen, or which may arise before the change from a territorial to a State government, and which shall then be pending, shall be prosecuted to judgment and

execution in the name of the State. All offences committed against the laws of the Territory of Minnesota before the change from a territorial to a State government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the authority of the State of Minnesota with like effect as though such change had not taken place, and all penalties incurred shall remain the same as if this constitution had not been adopted. All actions at law and suits in equity which may be pending in any of the courts of the Territory of Minnesota at the time of the change from a territorial to a State government may be continued and transferred to any court of the State which shall have jurisdiction of the subject-matter thereof.

SEC. 5. All territorial officers, civil and military, now holding their offices under the authority of the United States or of the Territory of Minnesota, shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the State.

SEC. 6. The first session of the legislature of the State of Minnesota shall commence on the first Monday of December next, and shall be held at the capitol, in the city of Saint Paul.

SEC. 7. The laws regulating the election and qualification of all district, county, and precinct officers shall continue and be in force until the legislature shall otherwise provide by law.

SEC. 8. The president of the convention shall, immediately after the adjournment thereof, cause this constitution to be deposited in the office of the governor of the Territory; and if, after the submission of the same to a vote of the people, as hereinafter provided, it shall appear that it has been adopted by a vote of the people of the State, then the governor shall forward a certified copy of the same, together with an abstract of the votes polled for and against said constitution, to the President of the United States, to be by him laid before the Congress of the United States.

SEC. 9. For the purposes of the first election, the State shall constitute one district, and shall elect three members to the House of Representatives of the United States.

SEC. 10. For the purposes of the first election for members of the State senate and the house of representatives the State shall be divided into senatorial and representative districts, as follows, viz: First district, Washington county; second district, Ramsey county; third district, Dakota county; fourth district, so much of Hennepin county as lies west of the Mississippi; fifth district, Rice county; sixth district, Goodhue county; seventh district, Scott county; eighth district, Olmstead county; ninth district, Fillmore county; tenth district, Houston county; eleventh district, Winona county; twelfth district, Wabashaw county; thirteenth district, Mower and Dodge counties; fourteenth district, Freeborn and Faribault counties; fifteenth district, Steel and Waseca counties; sixteenth district, Blue Earth and Le Sueur counties; seventeenth district, Nicollet and Brown counties; eighteenth district, Sibley, Renville, and McLeod counties; nineteenth district, Carver and Wright counties; twentieth district, Benton, Stearns, and Meeker counties; twenty-first district, Morrison, Crow Wing, and Mille Lac counties, twenty-second district, Cass,

Pembina and Todd counties; twenty-third district, so much of Hennepin county as lies east of the Mississippi river; twenty-fourth district, Sherburne, Anoka, and Manomin counties; twenty-fifth district, Chisago, Pine, and Isanti counties; twenty-sixth district, Buchanan, Carlton, St. Louis, Lake, and Itaska counties.

SEC. 11. The counties of Brown, Stearns, Todd, Cass, Pembina, and Renville, as applied in the preceding section, shall not be deemed to include any territory west of the State line, but shall be deemed to include all counties and parts of counties east of said line as were created out of the territory of either, at the last session of the legislature.

SEC. 12. The senators and representatives at the first election shall be apportioned among the several senatorial and representative districts as follows, to wit:

1st	district	2	senators,	3	representatives.
2d	"	3	"	6	"
3d	"	2	"	5	"
4th	"	2	"	4	"
5th	"	2	"	3	"
6th	"	1	"	4	"
7th	"	1	"	3	"
8th	"	2	"	4	"
9th	"	2	"	6	"
10th	"	2	"	3	"
11th	"	2	"	4	"
12th	"	1	"	3	"
13th	"	2	"	3	"
14th	"	1	"	3	"
15th	"	1	"	4	"
16th	"	1	"	3	"
17th	"	1	"	3	"
18th	"	1	"	3	"
19th	"	1	"	3	"
20th	"	1	"	3	"
21st	"	1	"	1	"
22d	"	1	"	1	"
23d	"	1	"	2	"
24th	"	1	"	1	"
25th	"	1	"	1	"
26th	"	1	"	1	"
		37		80	

SEC. 13. The returns from the 22d district shall be made to, and canvassed by, the judges of election at the precinct of Otter Tail city.

SEC. 14. Until the legislature shall otherwise provide, the State shall be divided into judicial districts, as follows, viz.

The counties of Washington, Chisago, Manomin, Anoka, Isanti, Pine, Buchanan, Carlton, St. Louis, and Lake, shall constitute the first judical district.

The county of Ramsey shall constitute the second judicial district.

The counties of Houston, Winona, Fillmore, Olmstead, and Wabashaw, shall constitute the third judicial district.

The counties of Hennepin, Carver, Wright, Meeker, Sherburne, Benton, Stearns, Morrison, Crow Wing, Mille Lac, Itaska, Pembina, Todd, and Cass, shall constitute the fourth judicial district.

The counties of Dakota, Goodhue, Scott, Rice, Steele, Waseca, Dodge, Mower, and Freeborn, shall constitute the fifth judicial district.

The counties of Le Sueur, Sibley, Nicollet, Blue Earth, Faribault, McLeod, Renville, Brown, and all other counties in the State not included within the other districts, shall constitute the sixth judicial district.

SEC. 15. Each of the foregoing enumerated judicial districts may, at the first election, elect one prosecuting attorney for the district.

SEC. 16. Upon the second Tuesday, the 13th day of October, 1857, an election shall be held for members of the House of Representatives of the United States, governor, lieutenant governor, supreme and district judges, members of the legislature, and all other officers designated in this constitution, and also for the submission of this constitution to the people for their adoption or rejection.

SEC. 17. Upon the day so designated as aforesaid, every free white male inhabitant over the age of twenty-one years, who shall have resided within the limits of the State for ten days previous to the day of said election, may vote for all officers to be elected under this constitution at such election, and also for or against the adoption of this constitution.

SEC. 18. In voting for or against the adoption of this constitution, the words "for constitution" or "against constitution" may be written or printed on the ticket of each voter; but no voter shall vote for or against this constitution on a separate ballot fro n that cast by him for officers to be elected at said election under this constitution; and if, upon the canvass of the votes so polled, it shall appear that there was a greater number of votes polled for than against said constitution, then this constitution shall be deemed to be adopted as the constitution of the State of Minnesota; and all the provisions and obligations of this constitution, and of the schedule hereunto attached, shall thereafter be valid, to all intents and purposes, as the constitution of said State.

SEC. 19. At said election the polls shall be opened, the election held, returns made, and certificates issued, in all respects as provided by law for opening, closing, and conducting elections, and making returns of the same, except as hereinbefore specified, and excepting, also, that polls may be opened and elections held, at any point or points in any of the counties where precincts may be established as provided by law, ten days previous to the day of election, not less than ten miles from the place of voting in any established precinct.

SEC. 20. It shall be the duty of the judges and clerks of election, in addition to the returns required by law from each precinct, to forward to the secretary of the Territory by mail, immediately after the close of the election, a certified copy of the poll-book containing the name of each person who has voted in the precinct, and the number

of votes polled for each person for any office, and the votes polled for or against the adoption of the constitution.

SEC. 21. The returns of said election for and against this constitution, and for all State officers and members of the House of Representatives of the United States, shall be made and certificates issued in the manner now prescribed by law for returning votes given for delegate to Congress; and the returns for all district officers, judicial, legislative, or otherwise, shall be made to the register of deeds of the senior county in each district in the manner prescribed by law, except as otherwise provided. The returns for all officers elected at large shall be canvassed by the governor of the Territory, assisted by Joseph R. Brown and Thomas J. Galbraith, at the time designated by law for canvassing the vote for delegate to Congress.

SEC. 22. If, upon canvassing the vote for and against the adoption of this constitution, it shall appear that there has been polled a greater number of votes against than for it, then no certificates of election shall be issued for any State or district officer provided for in this constitution, and no State organization shall have validity within the limits of the Territory until otherwise provided for, and until a constitution for a State government shall have been adopted by the people.

Done in convention, this twenty-ninth day of August, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second year. In witness whereof, we have hereunto subscribed our names, at the capitol, in the city of St. Paul, this twenty-ninth day of August, in the year of our Lord one thousand eight hundred and fifty-seven.

HENRY H. SIBLEY, of Dakota county,
President of the Constitutional Convention of Minnesota.

William Holcombe, of Washington county.
James S. Norris, do.
Henry N. Setzer, do.
Gold T. Curtis, do.
Newington Gilbert, do.
Charles J. Butler, do.
R. H. Sanderson, do.
George L. Becker, of Ramsey county.
Moses Sherburne, do.
Lafayette Emmet, do.
William P. Murray, do.
W. A. Gorman, do.
Jno. S. Prince, do.
Patrick Nash, do.
William B. McGrorty do.
Paul Faber, do.
Michael E. Ames, do.
R. B. Meeker, of Hennepin county.
Charles L. Chase, do.
Calvin A. Tuttle, do.
Wm. M Lashells, do.

Edwin C. Stacey, of Freeborn county.
David Gilman, of Benton county.
H. C. Wait, of Stearns county.
J. C. Shepley, do
Jno. W. Tenvoorde, do
Wm. Sturgis, of Morrison county.
W. W. Kingsbury, of St. Louis county.
R. H. Barrett, do
Robert Kennedy, of Scott county.
Frank Warner, do
Wm. A. Davis, do
Daniel J. Burns, of Dakota county.
Josiah Burwell, do
Henry G. Bailey, do
Andrew Keegan, do
James McFetridge, of Pembina county.
J. Jerome, do
Xavier Cantell, do
Joseph Rolette, do
Louis Vasseur, do
James C. Day, of Houston county.
O. W. Streeter, do
Thos. U. Armstrong, of Mower county.
Joseph R. Brown, of Sibley county.
C. E. Flandrau, of Nicollett county.
Francis Baasen, of Brown county.
Wm. B. McMahan, of Blue Earth county.
J. U. Swan, of Le Sueur county.
Alfred E. Ames, of Hennepin county.
J. P. Wilson, of Pembina county.

Attest: J. J. NOAH,
Secretary of the Constitutional Convention.

EXECUTIVE OFFICE, MINNESOTA,
St. Paul, December 21, 1857.

I, Samuel Medary, governor of the Territory of Minnesota, hereby certify that the foregoing is a correct copy of the constitution of the State of Minnesota, adopted in convention August 29, 1857, and approved by the people, October 13, 1857.

In testimony whereof, I have hereunto set my hand, and caused to be affixed the seal of the Territory, this 21st day of December, A. D. 1857.

S. MEDARY. [L. S.]

DEPARTMENT OF THE INTERIOR,
January 15, 1858.

SIR: In reply to your communication of this morning, requesting information in regard to the returns of the census of Minnesota, I have the honor to enclose herewith a statement showing the number and names of the counties of the Territory, the population of such of them as have been returned to this department, and the aggregate population thus returned, together with a copy of the instructions given by this department to the United States marshal and his two general letters upon the subject—of September 10, and December 23, 1857.

The department is not in possession of any information as to the nine counties and part of a tenth not returned beyond what may be inferred from the letter of the marshal above referred to.

I am, very respectfully, your obedient servant,
J. THOMPSON, *Secretary.*

Hon. J. S. GREEN,
United States Senate.

DEPARTMENT OF THE INTERIOR,
January 16, 1858.

SIR: By this morning's mail this department has received additional census returns from Minnesota, embracing two counties not previously reported—Cass and Waseca. They show the following amount of population:

Cass	196	
Waseca	2,399	
		2,595
Which, added to the aggregate of yesterday's statement		133,869
Gives a total of		136,464

In reply to your verbal inquiry of last evening, I have to state that the ratio of representation under the seventh census is 93,420.

I am, very respectfully, your obedient servant,
MOSES KELLY,
Chief Clerk.

Hon. J. S. GREEN,
United States Senate.

Population of Minnesota, by counties, as far as heard from.

1. Houston	5,264	29. Benton	688
2. Winona	8,163	30. Stearns	2,840
3. Fillmore*	6,595	31. Meeker	1,014
4. Olmsted	8,458	32. Morrison	751
5. Dodge	3,680	33. Manomia†	----
6. Mower†	----	34. Washington	6,182
7. Freeborn	2,485	35. Chisago	1,763
8. Faribault	689	36. Pine	102
9. Waseca†	----	37. St. Louis	1,559
10. Steele	2,598	38. Isanti	184
11. Blue Earth	3,628	39. Pierce†	----
12. Wabashaw	5,115	40. Cass†	----
13. Goodhue	6,951	41. Pembina†	----
14. Rice	6,440	42. Crow Wing	176
15. Le Sueur	3,610	43. Mille Lac†	----
16. Nicollet	3,437	44. Todd	81
17. Brown	1,629	45. Buchanan	120
18. Sibley†	----	46. Carlton	239
19. Scott	5,302	47. Lake	1,212
20. Carver	3,117	48. Itasca†	----
21. Reaville	245	49. Cotton Wood	173
22. McLeod	822	50. Murray	91
23. Dakota	8,158	51. Nobles	16
24. Hennepin	13,064	52. Rock	52
25. Ramsey	12,748	53. Jackson	50
26. Anoka	1,559	54. Martin	55
27. Wright	2,233	55. Pipe Stone	24
28. Sherburn	507		
		Total	133,869

* Partial return. † No returns.

35TH CONGRESS, 1st Session. } SENATE. { REP. No.

IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 92.]

The Committee of Claims, to whom was referred the petition of G A. O'Brien, report:

That this claim was examined, and a favorable report made b Committee of Claims of the Senate, on the 16th of January, which the committee hereby adopt, and make the same the repo this committee, and hereby presenting the bill reported at the session.

IN THE SENATE, *January* 16, 1857.

The Committee of Claims, to whom was referred the petition of G A. O'Brien, report:

The petitioner alleges that, during the year 1845 and a porti 1846, he was clerk for the Chickasaw Indians, by virtue of a t stipulation and an appointment authorized by the President, salary of $600 per annum, payable out of the "Chickasaw fu He was located for the performance of these duties in the Se Auditor's office. About one-third of his time was occupied by Chickasaw business. The clerical force of the Second Auditor insufficient at the time to keep up the business, Mr. O'Brien directed to devote that portion of his time not required by the C asaw business to the examination and adjustment of accounts in Auditor's office. He says he was constrained to submit to requirement of the Auditor, or be deprived of his Chickasaw c ship.

For this service in the Auditor's office, to which he says he de two-thirds of his time, he claims two-thirds the rate of pay allowed to temporary clerks on similar duty—to wit, $2 66 per for 206 days, amounting to $549 38.

It appears from the "act for the relief of Sayles J. Bowen,

Stat. 810,) that the successor of Mr. O'Brien has been paid for like services.

Mr. Polk, who was the chief clerk in the Second Auditor's office at the time, deposes to the truth of the facts stated in the petition.

Under these circumstances, the committee report a bill for the payment of the account.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 23.

IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1858.—Ordered to be printed.

Mr. POLK made the following adverse

REPORT.

[To accompany Bill S. C. C. 93.]

The Committee of Claims, having had under consideration the claim of Nahum Ward, report as follows:

This claim is for payment of forty-three loan office certificates, purporting to have been issued under a resolution of Congress of the 22d February, 1777. Each of the certificates is for $400, and dated the 23d December, 1777, payable on the 1st of December, 1781, with interest annually at the rate of 6 per cent. per annum, signed Samuel Hillegas. On each of them is the following:

"Countersigned by order of S. A. Trustlin, esq., governor of Georgia.

"E. DAVIS, JR."

On twenty-nine of these certificates is the following endorsement:

"Four years' interest to December 23, 1781, paid in bills of exchange.

"M. HILLEGAS, *Continental Treasurer.*"

The committee find that M. Hillegas was at the above dates continental treasurer, and that Samuel Hillegas was authorized by the resolution of Congress to sign the certificates. They, therefore, have no reason to question the genuineness of the body of the certificates themselves, nor of the endorsement of the payment of four years' interest to the 23d December, 1783.

But by a resolution of Congress of the 3d of October, 1776, a loan office was established in each of the United States, and a commissioner was to be appointed by the said States to superintend the office; and also that each certificate sent to the respective loan offices by the Treasurer of the United States should be countersigned by the commissioner to whom they should be sent.

The countersigning of the certificates by the commissioner was therefore indispensable in order to give them effect; and these certificates sent to Georgia were of no validity until they were countersigned by the commissioner.

The countersigning is by "E. Davis, jr." This E. Davis, jr., does not claim to have acted as commissioner, and there is no proof offered to show that he ever was really such commissioner.

The countersigning, it is true, purports to have been done by order of J. A. Trustlin, governor of Georgia. But the resolution of the continental Congress requires the commissioner to be appointed by the States, and not by the governors. And there is no act of the legislature of Georgia produced to show that the governor was authorized to appoint a commissioner, nor is there any evidence that Governor Trustlin ever appointed said Davis commissioner.

The committee, therefore, find themselves constrained to the opinion that these certificates are not countersigned by the loan office commissioner of the State of Georgia, and that, so far as the United States are concerned, they are consequently absolutely void.

The committee also beg leave to say that there is not a particle of evidence that the United States ever received any value for the certificates. If there had been proof that the United States had received any value for them, the committee would have unhesitatingly recommended the refunding that value to the party legally entitled to it.

Your committee do not think that payment of interest on twenty-nine of the certificates imposes on the United States the obligation of paying the principal of them. If void before the payment of the interest, that fact cannot make them valid. Suppose they had been forged, or that the endorsed countersigning on them had been forged, it would hardly be contended that the payment of the interest on them then would of itself have imposed on the United States the obligation to pay them. If paid under these circumstances by the Treasurer, he would have been obliged himself to stand the loss; and the same, your committee submit, would have been the consequence if he paid these certificates on the proof appearing in this case.

The resolution of Congress, on the subject of these loan office certificates, required that the certificates sent to the commissioners of the States "should be indented, and the checks kept in the commissioner's office;" that the commissioner "should keep books, in which regular entries should be made of the sums borrowed, and the time when, and the names of the persons by whom, the said sums were lent;" that he "should transmit to the continental treasurer, once a month, an account of cash in his office, and answer all drafts of the Treasurer to the amount of the cash which he should at any time have in his hand."

Your committee think that, if these certificates were really countersigned by any commissioner for the State of Georgia, who had complied with his duty in regard to them, as defined in the foregoing resolution, it would have been an easy matter to have shown the fact of such countersigning; yet such fact is not shown, nor is there even an attempt to produce the proof required by the resolution.

The committee state that this case has been before the Court of Claims, and two of the judges, Judge Gilchrist delivering the opinion of the majority of the judges, decided in favor of the claim, while Judge Blackford dissented, and delivered a dissenting opinion.

But the claim had, before then, been several times presented to the

Treasury, and always disallowed. First, in 1791; then again in 1792, when it was examined by Alexander Hamilton, and again disallowed. And still again in 1795, the report of the Secretary of the Treasury examines these certificates and decides against them. And yet again, in 1816, Mr. Dallas, Secretary of the Treasury, reported to the chairman of a committee of the House of Representatives against the payment of these certificates. And finally, they were once more reported against from the Treasury Department in 1852.

It may also be added, that the payment of these certificates seems to have been reported against in the House in 1826, and also in the Senate in 1836, and again in 1844. But during the last Congress the Committee of Claims of the Senate reported favorably to the claim, and also reported the bill that had been reported to that committee by the Court of Claims.

Your committee append hereto the opinion of the Court of Claims, and the dissenting opinion of Judge Blackford. But after full consideration of the claim, they feel themselves constrained to report against its allowance.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 24.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1858.—Ordered to be printed.

Mr. HAMLIN made the following

REPORT.

[To accompany Bill S. 99.]

The committee to whom was referred the memorial of the directors of the Columbia Institution for the Instruction of the Deaf and Dumb and the Blind, and of sundry citizens of the District of Columbia, praying for the aid of Congress to said institution, have had the same under consideration and ask leave to report in part:

That the Columbia Institution was incorporated by Congress at their last session, and in the act of incorporation provision was made for payment out of the treasury of the United States of one hundred and fifty dollars per annum for the maintenance and tuition of each deaf and dumb and blind pupil properly belonging to the District of Columbia who might not be able to command the means to pay for his own support and instruction. The institution was organized under this act, and commenced with five pupils, which have since been increased to seventeen, and a further increase of the number to twenty-five, or more, is anticipated within a year to come, and within a few years to fifty or more.

Of the pupils now in the institution, fifteen are supported by the government and two by their parents.

It is obvious that one hundred and fifty dollars per annum is barely sufficient to feed and clothe indigent pupils, and even when parents or guardians furnish clothing can leave but little surplus to be applied towards the payment of salaries and other necessary expenses. To furnish the institution and pay salaries and incidental expenses thus ar, the directors and other benevolent citizens have contributed liberally, though not to an amount adequate to the object, and the pressure of the times has rendered that resource always precarious, at present unavailable; and your committee have no doubt that it will be very difficult, if not impracticable, for the directors to carry on the institution, even in a crippled and inefficient condition, without further aid from the government.

The object is one which commands universal sympathy, as is evinced by the liberal provision which has been made for the instruction of

the deaf and dumb and the blind in Europe and America. The Congress of the United States showed their appreciation of the object, not long after the introduction of the system of mute instruction into this country, by a donation of lands to the American Asylum at Hartford, Connecticut, out of which that institution has accumulated a fund of about $300,000. Grants of land have also been made by Congress to the deaf and dumb, as well as the insane asylums of Kentucky, and that body has provided most liberally for the insane of this District.

Many of the States have made ample provision for the instruction of these unfortunate classes of their population, by the construction of buildings, a *per capita* allowance for indigent pupils, and annual appropriations to pay salaries and meet contingencies. The amount allowed last year for board, tuition, and clothing in the New York Institution for the Deaf and Dumb was $180 for each pupil, in addition to which the legislature makes a regular appropriation of $5,000 per annum. Pennsylvania, Maryland, Ohio, Virginia, Indiana, North Carolina, Michigan, Texas, and, perhaps, other States, have institutions for the instruction of the deaf and dumb or of the blind, or both, which have been established and are supported, in whole or in part, by appropriations from the State treasurys.

Your committee are informed that the average cost of supporting deaf, dumb, and blind pupils in the principal State institutions, including the salaries of superintendents, matrons, teachers, and all contingencies, does not vary much from $200 each. Where the number of pupils is small, the cost of each must be greater, for the expenses do not increase in the same proportion as the number of pupils increases.

The directors of the Columbia Institution ask an annual appropriation of $3,000, in addition to the *per capita* allowance now provided for; and with this allowance they pledge themselves to meet all current expenses of the institution, without calling on Congress for further aid. Your committee think the object meritorious, and the request reasonable. They therefore report a bill making the allowance requested, limiting it to five years. The committee have thought it proper to introduce a section placing the deaf and dumb and blind children of persons in the military and naval service of the United States on the same footing in relation to this institution as the deaf and dumb and blind in the District of Columbia.

So much of the memorial as relates to buildings and lands your committee reserves for further consideration.

All of which is respectfully submitted.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 25.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1858.—Ordered to be printed.

Mr. EVANS made the following

REPORT.

[To accompany Bill S. 30.]

The Committee on Revolutionary Claims, to whom was referred the petition of Elizabeth Montgomery, daughter of Captain Hugh Montgomery, praying relief, beg leave to adopt their former report, as heretofore made at the last session of Congress, which is as follows, to wit:

The memorial of the petitioner, which is very circumstantial in substance, presents these facts: She is the daughter of Captain Hugh Montgomery, formerly of Wilmington, in the State of Delaware, and employed as captain of the brig Nancy of that port, belonging to himself and others; that in the latter part of the year 1775, the said brig, chartered by Robert Morris, then a member of Congress, was despatched to the West Indies with a cargo of flour to be sold, and the proceeds returned to the United States in gunpowder and munitions of war. The cargo was sold at Porto Rico, and the Nancy then proceeded to St. Croix, where she was privately loaded with her return cargo, consisting of 460 barrels of gunpowder, six long four-pounders, four chests of small arms, and other munitions of war, and with sundry articles of merchandise belonging to the said Montgomery. After the reception of his cargo, by means of the cannon and some swivels, and other arms, Captain Montgomery converted his ship into a vessel-of-war, and sailed for the Delaware in order that he might deliver his cargo at Philadelphia, according to his directions. When he approached the Delaware capes he was intercepted by two British ships-of-war. He succeeded in beating off the boats sent to capture him; but finding it impossible to escape capture, he ran his ship into shoal water and commenced removing the powder and munitions of war to the shore, and securing them from capture, leaving the private property to its fate. He kept off the enemy's boats whilst he landed 244 barrels of the powder, the cannon, small arms, and other munitions of war, with the aid of Captain Weeks, who commanded some American vessels-of-war within the Capes. When he had so far succeeded in saving the cargo, one of the enemy's vessels approached within three hundred yards, cast anchor, and opened a destructive fire, whilst several boats filled with men approached for the purpose of boarding the Nancy.

Finding it impossible to save more of the powder and the private property, he left the vessel, having laid a train and match communicating with the powder, preferring to destroy both his vessel and the rest of her cargo rather than it should fall into the hands of the enemy. The boats' crews had scarcely taken possession of the vessel, when she was blown up with all on board, and, with the remains of her cargo, was destroyed. That part of the cargo which had been saved was transported to Philadelphia and safely delivered to the agents of the government. Subsequently to this Captain Montgomery went to sea in a private armed ship, was captured by a British cruiser, imprisoned for a long time, and treated with great harshness on account of the destruction of so many British sailors by blowing up his vessel, as before stated. During his long imprisonment his mind became disordered, and during his voyage homeward, after his release, he leaped overboard in a fit of insanity and was drowned, leaving a widow, who has been long dead, and the petitioner, his only child, then a small girl.

The petitioner prays that Congress should make her some compensation for the losses of her father, sustained in the destruction of his vessel, as before stated, and for his patriotic conduct in saving the public property, then so much needed, to the neglect of his own, which he might have saved, instead of that which belonged to the public.

A claim is set up for the value of this private property, shipped on board the Nancy on his own account. But of this no satisfactory evidence has been given, and the committee have been unable to form any estimate of its value. As to the other part of the claim, the main facts are fully proved by an affidavit of Captain Mendenhall, who was one of the crew of the Nancy, and cognizant of all the facts of the voyage, and the safe landing of the greater part of the munitions of war. The blowing up of the vessel and the saving of the gunpowder are stated in an original letter, filed with the evidence, from George Reed, one of the signers of the Declaration of Independence, to his wife, dated the 6th of July, 1776, a few days after the occurrence. And, on the whole, the committee are of opinion that the facts hereinbefore set forth are satisfactorily proved.

If, as is alleged, the vessel was chartered for the purpose set forth, it is presumed no doubt could exist that the government ought to pay; the destruction being beneficial to it, and inevitable under the circumstances, to prevent the vessel and her cargo from falling into the hands of the enemy. Many claims of this kind have been paid.

The great difficulty in allowing this claim is its antiquity; but in this case the delay is satisfactorily accounted for.

On a review of the whole case, the committee have come to the conclusion that the petitioner ought to be liberally remunerated to the extent of any loss sustained in the destruction of the vessel by her father.

But after such a length of time no evidence could be furnished of the value of the vessel. Any estimate would be conjectural; but as the claim is a just one they have come to the conclusion to give her $5,000 as a full and final satisfaction of her claim, and report a bill *for that purpose.*

35TH CONGRESS, 1st Session. | SENATE. | REPORT No. 26.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1858.—Ordered to be printed.

Mr. STUART made the following

REPORT.

[To accompany Bill S. 100.]

The Committee on Public Lands, to whom was referred the "petition of H. W. Benham, administrator of the estate of the late John McNiel, praying a confirmation of the title of said McNiel to certain lands," report:

That they have examined the same, the evidence therewith submitted, and the report made in the same case to the 34th Congress by this committee, and that they concur in the same, as follows:

"It appears that on the 20th of June, 1840, the late John McNiel purchased of Lucius Lyon certain portions of the south fractional half of the northeast quarter of section nineteen, in township seven north, range five west, situated in the State of Michigan. This tract of land being located on the east side of Grand river, and said Lyon, being the owner of a tract of land directly opposite, on the west side of said river, also included in said deed to McNiel certain islands lying in Grand river between said two tracts of land, believing his original purchase of the government included said islands.

"It further appears that said Lyon was in the occupancy of those islands from 1832 to the date on which he deeded them to McNiel, in 1840; since which date they have been in the occupancy of McNiel, or his legal representatives.

"It also appears that in 1856 the largest one of those islands was surveyed by the government surveyor, and the minutes of the same forwarded to the General Land Office, which is designated as island number four, containing 4.21 acres.

"The petitioner, therefore, fearing that the title of said McNiel to said island, and the islets adjacent thereto, may be affected in consequence of said survey, prays that the title of the government to the same be relinquished to the estate of said McNiel.

"The committee being of the opinion that the estate is equitably entitled to the land claimed, accordingly report the accompanying bill, and recommend its passage."

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 27.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1858.—Ordered to be printed.

Mr. DAVIS made the following

REPORT.

[To accompany Bill S. 101.]

The Committee on Military Affairs, to whom was referred the memorial of Mrs. Agatha O'Brien, widow of Brevet Major J. P. J. O'Brien, having had the same under consideration, report:

The memorialist states "that her late husband was assistant quartermaster United States army from 1847 to the time of his death, and, as such, disbursed large sums of public money at various places, particularly at Camargo, Mexico, and Indianola, Texas; that while actually in the performance of his duties * * * he was seized with cholera and died after a few hours' illness, at Indianola, on March 31, 1850, necessarily leaving his accounts in a very unsettled condition. Upon a settlement of his accounts at the treasury, a balance of about seven hundred dollars stands charged against him, while his pay and emoluments, for the quarter ending on the day he died, are to his credit, $335 50.

The memorialist prays for the passage of an act for her relief, directing that the balance to the debit of her late husband be cancelled, and that the quarter's pay due him on March 31, 1850, be paid to her.

The committee, in investigating this case, find the facts to be substantially as stated above, except that Major O'Brien is also largely indebted to the United States, since 1847, on property account. But in view of the circumstances of his sudden death; that he was ever zealous and scrupulous in the discharge of his duty; that he was a brave and gallant officer; that he leaves a widow and children in a destitute condition, the committee report a bill for the relief of the memorialist, directing that she be paid the amount due her late husband, as pay and emoluments, from the day he was last paid until the day of his death, to wit: from December 31, 1849, to March 31, 1850, and that the balance thereafter standing against him on the books of the treasury be cancelled.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 28.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1858.—Ordered to be printed.

Mr. DAVIS made the following

REPORT.

[To accompany Bill S. 102.]

The Committee on Military Affairs and the Militia, to whom was referred the petition of Thomas Phœnix, jr., having had the same under consideration, report:

The petitioner during the war with Mexico was employed by D. Randall, deputy paymaster general, as his clerk, and received his regular pay of $500 per annum for a little more than two years. The disbursements of the deputy paymaster general at New Orleans were very heavy, and would have justified the employment of extra clerks. The expense of additional clerks, however, was saved to the government by the extraordinary efforts of the petitioner, under the assurances of the deputy paymaster that he should be allowed an increased compensation for these services, which increased compensation has been allowed to many other paymasters' clerks under the same circumstances.

The justice and equity of this claim are acknowledged by the Paymaster General and by the Secretary of War. The latter officer admits that if Colonel Randall had paid the increased compensation now claimed it would have been allowed by the department, as being in strict accordance with law.

This case was favorably reported upon a year ago in the House of Representatives, was not acted upon for want of time, but was, with all the other unfinished business of the House, referred to the Court of Claims. The Court decided the case to be beyond their jurisdiction, but that the petitioner *has a strong equitable claim upon the United States.* Colonel Randall says: "I believe the labors and services to the government of Mr. Phœnix were at least equal to any other paymaster's clerk, and I earnestly recommend that he be allowed the highest rate of pay that has been received by any paymaster clerk in the public service during the war with Mexico."

The committee, in view of all the circumstances of the case, recommend that the petitioner be paid, during the time he was in the employment of Colonel Randall as paymaster's clerk, the same compensation as was paid to other paymasters' clerks similarly situated, say $3 per day, instead of $500 per annum, and report a bill accordingly.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 29.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1858.—Ordered to be printed.

Mr. SLIDELL made the following

REPORT.

[To accompany Bill S. 104.]

The select committee appointed under a resolution of the Senate of 17th December last "to examine into the condition of the corporations or associations acting as banks of deposit, discount, and issue in the District of Columbia, and the authority under which said corporations or associations assume to transact the business of banking; also to inquire whether any, and what, further legislation is necessary to regulate and control banks of deposit, circulation, and issue in the District of Columbia," ask leave to make the following report:

In pursuance of the power conferred upon them, your committee addressed the following circular to the several corporations or associations carrying on business in the District of Columbia as banks of issue, to wit: the trustees of the Bank of the Metropolis, Bank of Washington, Patriotic Bank, Farmers and Mechanics' Bank of Georgetown, and the Bank of Commerce of Georgetown:

SENATE CHAMBER, *December* 23, 1857.

SIR: I have been instructed by the select committee of the Senate appointed to examine the condition of the corporations or associations acting as banks of deposit, discount, and issue in the District of Columbia, to request that you will furnish, at as early a day as possible, a full statement of the affairs of the Board of Trustees of the , detailing the assets and liabilities of the same, with full and complete list of its debtors; the amounts due by each; when their obligations were contracted, and when they mature; how the same are secured, and any other information which you may consider as proper and necessary to a just appreciation of the condition of its affairs.

Very respectfully, your obedient servant,

JOHN SLIDELL, *Chairman.*

The circular was sent to the last named institution, under the erroneous impression that it was in the same category as the four others, receiving its title and exercising its powers derivatively from a special act of incorporation. It appears, however, that the Bank of Commerce was organized in 1852, by an association of individuals claiming no peculiar immunities or privileges, but forming a partnership for the transaction of banking business, under no other obligations or restrictions than those resulting from the general law regulating commercial partnerships in the District of Columbia, and therefore not subject to the supervision of Congress in the administration of their affairs. If the partners have violated the law, as in the opinion of your committee they have, by issuing notes for circulation, they are only amenable for such violation to the ordinary judicial tribunals. The president, however, furnished a statement of the condition of the bank, which will be incorporated in the general statement of the affairs of all the banks of issue, for the purpose of presenting a synoptical view of the extent and character of their operations. To understand the present condition and rights of the other associations, it is necessary to present a brief history of their origin, of the several acts of Congress amending or extending their charters and providing for the liquidation of their affairs.

The Bank of Washington was incorporated February 15, 1811; the Farmers and Mechanics' Bank, Patriotic Bank, and Bank of Metropolis, March 3, 1817. By the act of March 2, 1821, the charters of all these banks were extended to March 3, 1836; and by act of February 9, 1836, they were further extended and limited to October, 1, 1836; and again, on July 2, 1836, extended to July 4, 1838; on May 31, 1838, they were extended to July 4, 1840; on July 3, 1840, they were further continued to July 4, 1844. By this act, Congress adopted the policy of liquidating all the incorporated banks in the District of Columbia. The country was then slowly recovering from the disastrous consequences of the general suspension of 1837, and the mischievous effects of a debased currency were felt and appreciated by all classes of the community. As the act of July 3, 1840, seems to have escaped the attention of the courts and jurisconsults, whose judgments and opinions have been invoked to sustain the present action of the banks originally deriving their charters from Congress, it may be well to give its provisions in full. It is to be found in the 6th volume of Brown and Little's edition of Statutes at Large, page 802. Why it was placed among the private statutes, when every other act relating to a bank or banks in the District of Columbia has been classed with the public acts, is not the province of your committee to decide. The failure of the trustees and counsellors of the banks to take any notice of it, in the various arguments they have adduced to sustain the legality of their operations, since July 4, 1844, might, perhaps, warrant the suspicion that this deviation from the ordinary classification was not accidental. It is entitled "An act to continue the corporate existence of certain banks in the District of Columbia for certain purposes." It declares that "the provisions, restrictions and enactments of the act of Congress of May 25, 1838, entitled 'An act to extend the charter of the Union Bank of Georgetown, in the District of Co-

lumbia, be, and the same are hereby, extended to the Farmers and Mechanics' Bank of Georgetown, the Bank of the Metropolis, the Patriotic Bank of Washington, and the Bank of Washington: *Provided*, That whenever, in the original act, the 1st July, 1838, occurs, it shall be so construed as to mean the 4th July, 1840;" and whenever the 1st July, 1842, occurs, it shall be construed to mean the 4th July, 1844.'"

The preamble states the motives and object of the law; it is in these words: "Whereas it appears that an extension of the charter of the Union Bank of Georgetown beyond 1st day of July, 1838, together with some amendment thereof, is necessary to enable the said corporation the better to close its concerns, redeem its obligations, and collect its debts; and the extension and amendment aforesaid have been asked by the said corporation for the purposes above specified, and for none other." The 3d section provides for a meeting of the stockholders, who may elect a trustee or trustees, not exceeding three, to whom shall be granted until July 1, 1842, (July 4, 1844,) the management of the concerns of the bank as fully and with the same limitations, together with others thereinafter to be named, as were then given to the president and directors of said corporation. If trustees be elected, the president and directors shall appoint a commissioner to transfer to the trustees all the property of the corporation, upon the condition, first, of discharging all the debts due from said corporation; and, after the satisfaction of this trust, upon such other trusts and conditions, not inconsistent with their charter as therein amended, as they may see fit. The 4th section provides that the said corporation shall not, after July 1, 1838, (July 4, 1840,) issue or re-issue any bills, notes, or checks payable to bearer, nor issue certificates of deposit payable to bearer, nor receive any money or other property from any other corporation, and from any person other than one of its stockholders on deposit, and under obligation to return it; nor shall the said corporation, at any time after the 1st of July, 1838, receive or enter into any new obligations or liabilities other than such deeds or assignments as may be necessary to convey away absolutely the property, real or personal, of the said bank, or other than the renewal from time to time of existing debts due said corporation on the receipt of partial payments, and the taking of such obligations, additional assurances, new liens, or new sureties, as may be necessary and proper for securing the collection of debts due to the said bank on the first of July, eighteen hundred and thirty-eight, and for enforcing the performance of obligations created on or before the day and year last aforesaid.

The act then goes on to provide remedies for recovery of debts due to corporation. The 8th section declares, that, unless the president and directors, for the time being, of the said corporation, shall, on behalf of the stockholders, and in virtue of an authority from a majority in interest and number of them, file their declaration in writing in the office of the Secretary of the Treasury within six months from the date of the act, assenting to and accepting the extension of the charter thereby granted, under the terms, conditions, and limitations contained in the act, the corporation shall forfeit all right to an extension of the charter. By the annual letter from the Secretary of the Treasury, it appears that the Bank of the Metropolis, Bank of Washing-

ton, Patriotic Bank of Washington, and Farmers and Mechanics' Bank of Georgetown, severally filed, before the expiration of the six months limited by the act, the certificate of the president and directors assenting to and accepting its terms and conditions. It would naturally be supposed that these conditions having been voluntarily accepted by the banks, they would have proceeded in good faith to comply with them. Not so. They continued to importune Congress for a renewal of their charters and the restoration of their old privileges; but, failing in this, no further legislation is to be found in relation to them, except the act of June 17, 1844, which merely provides that suits might be commenced or continued by or against the banks, as if their charter did not expire on July 4, 1844. This act would seem to have been quite unnecessary for the purposes enumerated, every proper remedy having been granted by the provisions of May 25, 1838, for the recovery of debts. This is expressly declared in the opinion of the counsel of the Bank of Metropolis, dated June 25, 1844, sent to the committee by the president of that association. It would be difficult to suppose any other motive for the application to Congress than the hope that, by enlisting its sympathies in favor of the stockholders on the plea that unless the charters were renewed, there could be no means of collecting the debts due to the banks, they would thus obtain some legislation that would enable them to continue their business. This fact, with others strongly illustrating the bad faith of these corporations, is forcibly stated by a select committee of the House, of which Mr. Burke, of New Hampshire, was chairman, in a very able report made on the 25th February, 1845.

Failing in their efforts to obtain the renewal of their charters, the banks determined to evade, or, rather, flagrantly to violate, all the conditions imposed upon them by the act of 3d July, 1840, adopting the provisions of that of 25th May, 1838, to which reference has been heretofore made. No axiom of law is better established or more universally recognized than that no man or set of men can convey to others a greater power than that which they themselves possess: the delegated power can never exceed the original. It would be idle to quote authority to establish a principle so rudimental. The mode of operation in the case of the Bank of the Metropolis, and the same course was substantially pursued by the other banks, was this: the stockholders were convened, the president and directors were selected as trustees. They could not execute an assignment to themselves, and Richard Smith, the cashier, was selected as the agent and conduit through whom the property and effects of the old were to pass to the trustees of the new institution. The transfer was made to Smith on 3d July, 1844, who then assigned them to the trustees.—(Merrick *vs.* Trustees Bank of the Metropolis, 8 Gill's Reports, page 69.)

It thus appears that the president and directors sold nominally to their cashier, but, in fact, to themselves, as trustees, without consideration, or if any were named, it was, of course, purely fictitious, all the assets of their respective institutions, with power to carry on a general banking business, without any of the restrictions and safeguards for the community under which they had acted as corporations. A more shameless attempt to evade the express provisions of law

cannot well be imagined; and the committee believe that if the acts of May 25, 1838, and 3d July, 1840, had been submitted to the court of appeals of Maryland, in the case of Merrick *vs.* Trustees of Bank of Metropolis, the decision would have been very different. In that case it was decided that the penal sections of 3d March, 1817, to which the committee will allude in connexion with the legality of the present issues of notes by these banks, were repealed; that consequently a note discounted by the bank in the ordinary course of business, the proceeds of which would be paid out in the bills of the bank, was not given for an illegal consideration, and therefore not null and void. The court expressly says, in its decision, that it considers the penal sections of the act of 1817 to have been repealed, and that "at the same time it is conceded that there is no other action of Congress, at least none has been referred to, as reaching these plaintiffs." Your committee do not, however, assent to the reasoning of the court of appeals of Maryland in the case above cited. The act of 3d March, 1817, is entitled "An act to incorporate the subscribers to certain banks in the District of Columbia, and to prevent the circulation of the notes of unincorporated associations within the said District." It had two objects—one special, the other general. The special object was to create certain corporations, investing them with certain privileges and immunities, to be enjoyed under many salutary restrictions, and to be limited in its duration, namely, to 1st January, 1822. The general object was to protect the community against the issue of notes for circulation by unauthorized and irresponsible companies or individuals; this, as the danger to be guarded against, was one at all times likely to occur—was permanent. It was a criminal statute, and intended always to be in force until expressly repealed. When the charters of the banks were about to expire, the act of 2d March, 1821, was passed under the title of "An act to extend the charters of the banks in the District of Columbia." The title here indicates the purpose. The 1st section provides that the acts incorporating the several banks of the District of Columbia herein named be, and the same are hereby, extended and limited to 3d March, 1836, under and subject to such limitations, modifications, and conditions as are hereinafter enacted. These are all confined specially to the banks named; the last section, in the opinion of the committee, completely repudiates the idea that the act was intended to apply to any other subject than the incorporated banks. It declares "that so much and such parts of the said acts incorporating the several banks aforesaid as may be repugnant to this act be, and the same are hereby, repealed and annulled." The provisions of the act of 1817 being limited to January 1, 1822, it was necessary to extend them, if the existence of the banks was to be continued; and, to preserve a proper control over them, public policy required that their duration should be limited. The penal sections were for all time, did not require renewal, and, consequently, neither the renewals nor limitations can be considered as applying to them. But, while the opinion of the committee is very decided on this question, as the judge of the criminal court of the District of Columbia, from whose judgment, it seems, there is no appeal, has decided that an indictment cannot be main-

tained under the act of 1817 for the issuing of bank notes, they think it expedient to remove all doubts on the subject by the passage of a law for its prohibition. The question as to the legality of the contracts made by the banks who have heretofore enjoyed the privileges of incorporation is one between them and their debtors, in which the public has no concern; and the committee has no disposition to speculate about the probable result of any question of that kind that may hereafter be brought before our judicial tribunals. That of the currency is of a very different character; it affects the interest of every member of the community, and Congress is bound, not only as the special guardian of the people of the District of Columbia, but for the sake of example to the nation at large, to watch, with the most jealous eye, everything that may have a tendency to debase it. Were there any reasonable hope that we could return to what the committee considers to be the true theory of the Constitution, a total prohibition of the circulation of paper money, issued under the authority of the several States, they would give such a measure their cordial support. But believing that the time is yet distant when the national mind will be prepared for the adoption of a purely metallic currency, they will make no suggestions of a general character, and will confine themselves to the subject immediately referred to them.

The table which is herewith presented shows conclusively that the issue of notes by the banks of the District of Columbia may be immediately suppressed without any inconvenience to the community. The aggregate net circulation amounts only to $265,929, assuming that at least $50,000 of the notes are held by the banks themselves, while, if their statements be correct, they have in their vaults $310,646 49. Deducting from this sum a third of the specie, $103,548, which is the lowest proportion which a safe banking system would require as a sound basis of circulation, it appears that the difference between these sums exhibits the whole amount of active means which would be withdrawn from the funds employed by them in discounting the paper offered by their customers is but $162,380. The interest on this sum, at six per cent., is $9,742 80. This is the extreme limit of the annual diminution of the profits of the stockholders by the suppression of their circulation; but when the additional expense attending this branch of their business is taken into account, it may well be questioned if any advantage be derived from it. But small as this circulation would appear from the returns to be, your committee believe that it is now larger than it was on the 26th September last, when they suspended specie payments. Immediately after that date large quantities of notes freshly signed, many of them even bearing a subsequent date, appeared; whether they were paid out to depositors distrusting their solvency, or the banks increased their discounts, your committee has not been permitted to examine; but the following extract from a letter from the president of the Bank of Washington, under date of January 12, addressed to the committee, will throw some light on this branch of the question: "Owing to the large amount of specie monthly disbursed by the government in this city, the circulation of the District banks has, of late years, been nearly nominal, the chief currency having been gold and

silver and notes of banks below par, the latter not being received as bankable funds. The circulation is larger now, in consequence of specie being at a premium, and because the trustees were solicited by merchants and others to increase their issues, and thereby keep other notes of doubtful value from being introduced."

The novel information that specie is at a premium, and not the notes of the Distri t banks at a discount, and the very ingenuous declaration that their failure to pay them when presented for redemption, has enabled them to increase their circulation, offer a fair exposition of the principles on which those institutions are conducted. The worthy president of the Bank of Washington has given the best possible reason for the suppression of District bank notes—the regular disbursements of the treasury in gold and silver furnish all the circulating medium required; those disbursements exceed in the aggregate six millions of dollars per annum, or five hundred thousand dollars per month, the latter sum being double the net circulation of all the banks of the District, even when stimulated by the suspension of specie payments.

But whatever advantage they may or might have derived from their circulation, these banks have no claim upon the indulgence of Congress. They exist and carry on business, if not in direct and open defiance of law, as your committee believe, certainly by a most shameless violation of the spirit of our past legislation. They have, with one honorable exception—viz: the Farmers' and Mechanics' Bank of Georgetown—refused to give the committee such information as will enable it to form any correct idea of their condition and solvency. The mere array of figures, showing a certain amount of assets in bills discounted, &c., is not, for the purpose of any serious examination, worth the paper on which it is written; a bank may have its portfolio bursting with promissory notes and other evidences of debt, and be utterly unable to meet the demands of its creditors; and the refusal to permit any inquiry into the character of their securities is not calculated to create confidence in their soundness. This remark, true in its application to all banks, applies with peculiar force to those of the District of Columbia; their bills or notes discounted form much the largest item of their assets. In large commercial cities they are generally based on real transactions, the exchange of credit for merchandise, and are, of course, almost invariably paid at maturity. Here, on the contrary, where there is little or no external commerce, except the export of flour and grain from Georgetown, a large proportion of the notes discounted is what is styled accommodation notes, or notes of persons borrowing money from the banks with endorsements for security. This class of paper is always repudiated by banks doing business on legitimate principles, because the borrower generally requires additional time for the payment of his debt, and renewals become the rule instead of the exception. In all old institutions much of this sort of paper will be found; and when they are forced into liquidation, its worthlessness will generally prove to be in proportion to the remoteness of its origin. It may be assumed as a fact, justified by all the experience of the past, that the true condition of any joint stock bank that has been

engaged in business for thirty or forty years, can only be ascertained, even approximately, by winding it up. It is hoped that the result may prove more favorable with the District banks than with nearly all others which have gone through the same process. These banks, too, have profited in another way by their suspension of payment. It will appear, by the annexed statement from the treasury, that, instead of employing their specie for the payment of their debts, they have, from the 26th of September, 1857, until the 18th of January, 1858, exchanged $207,050 of coin for a like sum in transfer warrants, which they have, of course, sold for a considerable premium, or given at par to their favorites.

Your committee, after full deliberation, is unanimously of opinion that it is expedient to prohibit the issue of all notes for circulation by individuals or associations in the District of Columbia, not expressly authorized by law to make such issues, and to prevent the circulation of all bank notes issued out of the District of Columbia of a less denomination than fifty dollars, and have reported a bill accordingly.

The committee also is of opinion that it is inexpedient to authorize the establishment, either by general or special laws, of banks of issue within the District of Columbia, and report a resolution to that effect; but should the Senate think proper to instruct the committee to prepare and report a general law authorizing the establishment of banks of discount, deposit and issue in the District of Columbia, it will endeavor to frame a bill, which, while conferring all proper privileges for such purposes, will, as far as possible, protect the community from their abuse.

The committee also submit the following resolution:

Resolved, That it is inexpedient to authorize the establishment, either by general or special laws, of banks of issue within the District of Columbia.

APPENDIX.

1. Circular, December 22, 1857.
2. Communication of W. Gunton, president Bank of Washington, December 29, 1857.
3. Communication of John Purdy, president Patriotic Bank, December 31, 1857.
4. Statement of the condition of the affairs of the Patriotic Bank.
5. Communication of R. Read, president of the Farmers and Mechanics' Bank of Georgetown, January 2, 1858.
6. Statement of the affairs of the Farmers and Mechanics' Bank.
7. Communication of Charles E. Rittenhouse, president Bank of Commerce, December 31, 1857.
8. General statement of the Bank of Commerce.
9. Communication of Thomas Carbery, president Bank of the Metropolis, January 5, 1858.
10. Statement of the affairs of the Bank of the Metropolis.

11. Communication to the president Bank of Washington, January 11, 1858.
12. Communication from W. Gunton, president Bank of Washington, January 12, 1858.
13. General statement Bank of Washington.
14. Weekly statement Bank of Washington.
15. Synoptical statement of District banks.
16. Communication from Secretary of the Treasury, January 4, 1858.
17. Communication from Levi Woodbury, Secretary of the Treasury, January 4, 1841, to W. A. Bradley, president Patriotic Bank.
18. Treasurer's memorandum of coin deposited by District banks for transfer warrants, from suspension of specie payments to January 18, 1858.

No. 1.

Circular addressed to the different banks of the District of Columbia, December 23, 1857.

SENATE CHAMBER,
December 22, 1857.

SIR: I have been instructed by the select committee of the Senate, appointed to examine the condition of the corporations or associations acting as banks of deposit, discount and issue in the District of Columbia, to request that you will furnish, at as early a day as possible, a full statement of the affairs of the board of directors of the ——— ———, detailing the assets and liabilities of the same, with a full and complete list of its debtors; of the amounts due by each; when their obligations were contracted, and when they mature; how the same are secured, and any other information which you may consider as proper and necessary to a just appreciation of the condition of its affairs.

Very respectfully, your obedient servant,

JOHN SLIDELL.

PRESIDENT OF BOARD OF TRUSTEES
Of Bank of Metropolis.

No. 2.

BANK OF WASHINGTON,
December 29, 1857.

SIR: I have the honor to acknowledge the receipt of your letter of the 23d instant, enclosing a resolution of the Senate of the United States, calling for certain information in regard to the banks of this District, and I this morning laid the same before the Board of Trustees. The subject was referred to a committee, and will receive due attention.

With great respect, your most obedient servant,

WM. GUNTON, *President.*

Hon. JOHN SLIDELL,
Chairman, &c., &c.

No. 3.

PATRIOTIC BANK OF WASHINGTON,
December 31, 1857.

GENTLEMEN: I have the honor to acknowledge the receipt of your letter of the 23d instant, communicating a copy of the resolution passed by the Senate on the 22d instant.

Your communication has been laid before the Board of Trustees, who have instructed me to transmit a statement of the affairs of the bank, prepared up to the 1st January, 1858, which it is hoped will be satisfactory to the committee.

I have been further instructed by the trustees to say, for the information of the committee, that this bank is not an incorporated institution, but a voluntary association of individuals, acting through a Board of Trustees appointed under a deed of trust duly executed and recorded in the clerk's office of the circuit court of United States for the District of Columbia.

Very respectfully, your obedient servant,

JOHN PURDY,
President.

Hon. JOHN SLIDELL,
Chairman of Committee.

No. 4.—*Statement of the Patriotic Bank of Washington.*

January 1, 1858	Due from banks	$60,004 48	January 1, 1858	Due to banks	$66,809 45
	Due bank stock	20 00		Due to individuals	31,452 48
	Lands in Maryland and Pennsylvania	21,000 00		Due to special deposits	1,185 89
	Banking house	14,000 00		Notes in circulation	23,115 00
	House and lot in Washington	2,500 00		Capital stock	250,000 00
	Canal bonds	27,000 00			
	Patriotic Bank stock	126,105 00			
	Bills and notes in suit	4,536 32			
	Bills and notes discounted	85,893 15			
	Suits at law	116 75			
	Loss and profit account	10,768 47			
	Checks and notes of other banks	8,208 70			
	Specie	12,409 95			
		372,562 82			372,562 82

No. 5.

FARMERS AND MECHANICS' BANK,
Georgetown, D. C., January 2, 1858.

SIR: In response to your communication of the 23d of December, I transmit herewith the cashier's last weekly statement, showing the condition of this bank on the 31st of December ultimo.

In regard to your request to be furnished with a list of the debtors of this bank, I am instructed by the Board of Trustees to say that they feel very reluctant to furnish such a statement to become a public document, which might thereby operate injuriously to such debtors; but they are willing that you, or the whole committee, if it will suit your convenience to do so, should call at the bank and examine all the accounts on our discount ledger.

Of the item of "bills and notes discounted," as shown by the cashier's statement, we consider $14,064 39 as debts lost to the bank; and, in consequence of recent commercial failures, we consider $26,500 of said bills and notes as in great danger of being lost.

To give the committee a more just estimate of the present value of the stock of the bank, it is proper to state that a committee of stockholders rigidly investigated the condition of the bank in July, 1849, and came to the conclusion that the capital stock then owned by shareholders, say $290,805, was only worth $197,947. Since then, by the recovery of debts deemed bad by the committee at that time, and gains upon real estate since that time disposed of, together with surplus profits, after paying dividends and expenses of the bank, that sum had been increased to the 31st of December, 1857, to $236,856 35. Should the $26,500, above referred to as "in great danger of being lost, be ultimately lost to the bank, it will reduce this last sum by that amount. The most of the $14,064 39, however, referred to as "lost," was excluded by the committee when they reported the capital stock as worth $197,947.

It may be proper to mention that several of the trustees are among the largest shareholders of the stock, and that the aggregate indebtedness of the board—nine in number—does not exceed $13,000.

I have the honor to be, very respectfully, yours, &c.,

R. READ,
President Farmers and Mechanics' Bank.

Hon. JOHN SLIDELL,
Chairman Select Committee, U. S. Senate.

No. 6.—*Statement of the condition of the Farmers and Mechanics' Bank of Georgetown, D. C., December* 31, 1857.

Capital stock owned by stockholders, on which dividends are declared		$288 730 00	Bills and notes discounted		$349,962 29
Interest account		374 61	Real estate		26,388 45
Dividends due stockholders		12,088 36	Profit and loss		13,988 19
Bank notes of the Farmers and Mechanics' Bank in circulation	$47,350 00		Suspense account		17,068 58
Due other banks	30,183 51		Law.....do		398 61
Due depositors	127,264 14		Stock.....do		233 33
		204,797 65	Protest.....do		422 42
			Expense.....do		36 13
			Due from other banks	$29,199 48	
			Gold and silver	58,142 22	
			Notes of checks on other banks	10,150 92	
					97,492 62
		505,990 62			505,990 62

Silver in our vault		$7,837 50
Gold.....do		50,304 72
Balance in New York, gold, embraced above, on amount due from banks		16,478 83
Amount of specie		74,621 05

I certify, on my honor, that the above statement, to the best of my knowledge and belief, represents the true condition of this bank.

W. LAIRD, JR., *Cashier.*

FARMERS AND MECHANICS' BANK, *Georgetown, D. C., December* 31, 1857.

No. 7.] BANK OF COMMERCE,
Georgetown, D. C., December 31, 1857.

SIR: The undersigned, president of the Bank of Commerce of Georgetown, has the honor to acknowledge the receipt of your letter of the 23d instant, addressed "to the president of the Board of Trustees of the Bank of Commerce of Georgetown," requesting "a full statement of the affairs of the Board of Trustees of the Bank of Commerce, detailing the assets and liabilities of the same, with a full and complete list of its debtors, the amount due by each, when their obligations were contracted, and when they mature; how the same are secured," &c.; and also enclosing a resolution of the Senate for your authority in the premises, adopted 22d instant.

It is evident, from the direction of this letter, that a misconception exists in the honorable committee of the Senate as to the origin and legal position of the Bank of Commerce, which may be easily removed by a brief explanation of the rise and establishment of that bank. Congress, by several acts, incorporated certain banks in this District, whose charters expired in July, 1844. The stockholders of these banks, at a public meeting held in June of that year, directed all their estate, real, personal, and mixed, to be conveyed to certain trustees upon certain trusts, uses, and purposes; and such deeds were duly made and recorded in the clerk's office of this District. The charters of such banks having expired in July, 1844, the trustees, it is said, were advised by the most eminent counsel that, as officers of such joint stock companies, they had full power to engage in the business of banking, and to issue paper money, discount notes, and receive deposits.

The trustees of these companies, having been thus fortified by the opinions of able lawyers, engaged in banking operations, and have continued in this business for upwards of thirteen years, and it may be inferred that their banking operations have been highly beneficial to the public. Certain individuals, to wit: Hugh B. Sweeny, Hamilton G. Fant, John L. Dufief, Richard Pettit, Mrs. Susan Ireland, Charles E. Rittenhouse, Samuel Fowler, William T. Herron, R. M. Boyer, and Timothy O'Neale, who are all residents of this District, and known to be large real estate owners, of abundant means, and who were entirely disconnected with the banks whose charters had thus expired, determined, in the absence of any banking law for this District, and at the solicitation of a large number of merchants, to appropriate a considerable part of their capital to the business of banking.

The population of the District having largely increased, and the current business of the two cities equally enlarged, these individuals, in the year 1852, formed a joint stock company, with a capital of one hundred thousand dollars, to carry on the banking business in Georgetown, and designated it the "Bank of Commerce of Georgetown." They were encouraged to undertake this business from the conviction that they would infringe no established public law, and from the belief that they had a right to appropriate their capital to the use of any legitimate object of business. The stockholders thus formed, the Bank of Commerce appointed a president and cashier, and controlled, revised, and supervised the acts of their officers at stated regular meetings. This company has been engaged since that year in banking opera-

tions—that is to say, in receiving deposits, discounting notes, and issuing bills for a limited circulation.

The first was clearly legal, as a deposit is only an agreement between parties, the depositor having a right to give his money to any individual to keep and control, and the depositee or bailee having the same right to receive the money. The right to discount is just as clear. A discount is but a loan, and all the public law enjoins is that no usury shall enter into the contract. And here it may be respectfully suggested that as a deposit and a loan not usurious are thus legal and harmless, no government, however despotic, much less free, has ever abridged or denied the rights of its citizens thus to contract in these simple forms.

The parties, then, to such innocent and legal operations should not be exposed to public view, it being the undoubted understanding of our customers that, as they have a right to borrow, and the transactions being legal and innocent, they ought not to be made accountable for any such engagements, either by a public exhibition of their names, or a searching scrutiny into their ability to pay. This suggestion is confirmed by the reflection that it is a private partnership, and only responsible to the judicial tribunals of the country for the propriety of its past operations, similar to other partnerships, and to be governed by the same laws.

The right to issue paper money was not restrained by any public law or act of Congress when this bank was established; and as such issues were then, and still are, legal, it is very clear that the stockholders and officers of this bank cannot be subjected to any penalty, or are amenable to other than the courts, for the exercise of an undoubted right.

That Congress has the right to enact any laws for the *future* concerning the currency of this District is beyond dispute, and the stockholders of this bank will be among the first to acquiesce in such legislation.

Confidently believing that they have transgressed no law, and that the courts are open to their customers for any imputed wrong, they cheerfully submit herewith to the consideration of the honorable committee such a statement of their condition as comports with a strict regard to the feelings, rights, and interests of others. That the bank has been of some considerable advantage to the mercantile community may be inferred from the fact that, during the period of its existence, about six years, it has discounted over *four million dollars*.

The circulation of the bank, which constitutes the only possible objection to it, so far as the public is concerned, never was any great object, averaging less than thirty thousand dollars.

Having referred for their authority to the general law, which gave them full power to engage in this business, and cheerfully rendering a statement of the affairs of the company, the undersigned believes that it fully complies with the object proposed by the letter of the committee.

I have the honor to be, very respectfully, your obedient servant,

C. E. RITTENHOUSE, *President.*

Hon. JOHN SLIDELL,
Chairman of the Select Committe, &c., U. S. Senate.

No. 8.—*General statement of the Bank of Commerce, Georgetown, D. C., January 2, 1858.*

Bills and notes discounted	$111,899 58	Capital paid in	$106,000 00
Stock account	13,649 80	Circulation	28,995 00
Real estate	13,314 36	Certificates of deposit	2,500 00
Due from other banks	29,698 06	Depositors	52,882 46
Sundry accounts, viz: costs of suits, expense, protest, profit and loss, and suspense accounts	4,619 01	Due to other banks	499 21
Notes of other banks	5,523 00	Exchange account	1,402 32
Checks on other banks	386 09	Surplus account	15,099 26
Specie	28,288 35		
	207,378 25		207,378 25

C. E. RITTENHOUSE, *President.*

BANK OF COMMERCE, *Georgetown, D. C., January 2, 1858.*

No. 9.] BANK OF THE METROPOLIS,
Washington, January 5, 1858.

SIR: I herewith enclose to you a statement of the condition of the Bank of the Metropolis, detailing the assets and liabilities of the institution, as requested in your letter of the 23d ultimo, which, I trust, will be satisfactory to the committee of the Senate. We do not feel authorized to furnish you with a list of our debtors, the amount due by each, &c., &c. By such an exposure we should be likely to lose all our customers, and might be made accountable to them in suits for damages. I am, however, authorized by the president, the cashier, and the trustees, to assure the committee that not one of them owes the bank a dollar, and this I know to be true.* They are all gentlemen in easy circumstances, and seldom have occasion to borrow money, from this or any other bank—certainly not beyond their ability to pay on demand.

The charter of this bank expired on the 4th of July, 1844. Before the expiration of the charter, July 3, 1844, the whole property and effects of the bank were sold and transferred to trustees, elected by the stockholders. By this sale and conveyance, executed in legal form, the Bank of the Metropolis became a private institution, and as such it has been carried on ever since, with the full knowledge that every stockholder is bound for the liabilities of the bank. I think I can say with truth that the bank has had as much of the confidence of the public since the charter expired as it ever had before, and that it has been as useful to the community, in all respects, as it ever was before that time. The bank is safely and justly conducted, and every accommodation is afforded to the public consistent with prudence. No wild speculations are here carried on. No purchases or sales of stocks, lands, or property of any kind. Nothing but a fair and legitimate system of banking is carried on, or permitted to enter into our business operations. The bank has a high and honorable standing, not only in this community but wide spread throughout the country, and I trust that it will continue to be so conducted as to maintain its character for punctuality and usefulness.

This bank suspended specie payments on the 28th of September last, after many of the banks east of us had ceased to pay coin. Although we paid out, the day before the suspension, near seventy thousand dollars in gold and silver, we had still a large amount of specie on hand, and were in a very sound and healthy condition; but the interest of the merchants and other business portion of the District required a suspension. We concluded that it was best, and yielded to public opinion. Many of our depositors advised and urged it upon us, as best for the bank and for the community. Our notes in circulation were only $49,500, whilst our gold and silver, and other specie funds, amounted to $370,078 65. Since the suspension, we have freely paid out gold and silver to depositors and note-holders, for all market and other necessary purposes, to the

* One of the trustees, a very rich man, with two other rich men, are joint drawers on a note for $6,000, procured for one of the churches in Washington, which note is now about to be paid.

amount of $164,266 82; whilst there has been paid into the bank, in gold and silver during the same period, $223,612 05. Since this unavoidable calamity fell upon the bank, I have not heard a single complaint, either among the depositors or the holders of our notes, and I am sure there has been no just cause for complaint.

These misfortunes will sometimes overtake banks, merchants, and even governments, and no human foresight can prevent it. The present crisis, like the cholera, seems to be travelling all over the world, and prostrating in its course the most wealthy men and the most stable and popular institutions. The city of Hamburg, remarkable for its wealth, and trading alone with specie, was in the range of this financial tornado, and many of her richest merchants have been stricken down and ruined by it. I do not doubt that if every bank in the United States was discontinued a similar crisis would occur every ten or twenty years; but the people of this country are too enterprising to be tied down to paying the cash for everything they buy, or everything they want. In truth, there is not specie enough in the world to carry on the business of this country. If our bank is not safe and useful to the community, none can be made so, for it is guarded, watched, and protected to the best of our skill and judgment, and as much with the view of serving the public as of promoting the interest of the stockholders.

In carrying on our bank, as a private institution, we have not violated any law or rule of propriety. We considered that we had as much right to carry on the bank, as we conduct it, as any merchant in Washington to carry on his business. Those who make deposits and deal with us find their own interest in it. The only inducement we offer to them is the regular and systematic manner in which we conduct our bank, and the facilities we afford them in carrying on their business.

I beg that the committee will excuse me for mentioning some of the services which this bank has rendered to the government when the treasury had no funds. In 1814 Col. Monroe, then Secretary of War, was sent to the Bank of the Metropolis by Mr. Madison to procure a loan of two hundred thousand dollars, to be forwarded to General Jackson, then at New Orleans, who was out of supplies for his army, and could not do without it. The loan was made and immediately transmitted to the General. Several times since that period the bank furnished specie funds to pay the members of Congress, mail contractors, &c., without interest or compensation of any kind, when the government could not otherwise procure it in time to meet the demand. This bank was for some time the depository of the public moneys, and afforded many facilities in the transmission of funds to different parts of the country, at our own expense and risk. For some years we paid the pensioners at this place, without any compensation whatever.

If the committee desire any further information in relation to the bank, we shall be pleased to furnish everything that can be useful.

I have the honor to be, very respectfully, sir, your most obedient servant,

THOS. CARBERY, *President.*

Hon. JOHN SLIDELL, *Chairman, &c., &c.*

No. 10.

DR. *State of the Bank of the Metropolis on the 31st of December, 1857, inclusive.* CR.

Bills and notes discounted, viz:			Capital paid in		$355,300 00
On personal security	$393,761 85		Notes in circulation		124,414 76
On domestic bills	64,483 27		Due to other banks		38,658 36
On stocks	59,315 00		Profit and loss account		21,986 99
On stocks on call	54,918 49		Unclaimed dividends	$14,869 57	
		$572,483 61	Depositors	316,573 96	
Stock of the bank	41 66				331,443 53
Other stocks	4,074 66				
		4,116 32			
Real estate taken for debt	4,500 00				
Do. banking-house	22,375 90				
		26,875 90			
Due from other banks	29,953 21				
Notes and checks of other banks	96,896 37				
		126,849 58			
Protest and costs of suits, accounts		8,360 79			
Suspense account		2,653 10			
Specie		130,464 34			
		871,803 64			871,803 64

BANK OF THE METROPOLIS, *Washington, January* 5, 1858.

R. SMITH, *Cashier.*

No. 11.

SENATE CHAMBER, *December* 12, 1857.

SIR: I have received your letter of December 29, acknowledging receipt of mine of December 23, calling for information of the condition and affairs of the trustees of the Bank of Washington, in which letter you say that the subject was referred to a committee of the board of trustees. I am instructed by the special committee to inquire if it be the intention of the board of trustees to give the information asked for in my letter of December 23. An immediate reply to this letter is requested.

Very respectfully,

JOHN SLIDELL,
Chairman Special Committee, &c.

W. GUNTON, Esq.,
Board of Trustees of Bank of Washington,
or in his absence cashier of said Board.

No. 12.

BANK OF WASHINGTON,
January 12, 1858.

SIR: By direction of the board of trustees of this bank, I have the honor to enclose herewith a statement showing the condition of this bank on the 1st day of January, 1858.

The board do not feel at liberty, in view of the relation existing between the bank and its debtors, to furnish in detail "a list of its debtors, the amount due by each, when their obligations were contracted, and when they mature;" considering that this would be in direct violation of the confidential nature of their transactions with the bank. Besides, it is thought that the statement herewith sent will exhibit the information "necessary to a just appreciation of the affairs of the bank."

In the year 1844, just previous to the expiration of the charter of the bank, the stockholders, in general meeting, placed in the hands of trustees all their assets, rights, and credits, for certain purposes, and among them the power to continue such banking acts and operations as they might legally do and perform. Under the authority thus conveyed, and the joint resolution passed by Congress about the same time, giving authority to wind up the affairs of the old bank, the trustees have been ever since acting in good faith, and have conducted their business, as they believe, acceptably to the citizens of Washington, and satisfactory to their customers generally. It is true they have been obliged to succumb to this panic which has spread so disastrously over the whole commercial world, but as this bank is a private association, all its stockholders are liable, both to depositors and note holders, so that there is no probability of loss occuring to either.

Under this unlooked for state of things the trustees determined to make no *new loans*, but urgently to call upon all its debtors for such curtails as they could pay without making any *sacrifices* to do so. This was done by most of them, and every note on which a renewal was asked, on the payment of a curtail, however small, was assented to. Had the trustees insisted on the payment of the notes as they became due, great inconvenienee and losses to the business men would have been the inevitable result; but it is now believed that this bank will not lose a dollar on its discounted paper in consequence of this untoward pressure. Owing to the large amount of specie monthly disbursed by the government in this city, the circulation of the District banks have of late years been merely nominal, the chief currency being gold and silver, and notes of banks below par, the latter not being received as bankable funds.

The circulation is larger now, in consequence of specie being at a premium, and because the trustees were solicited by merchants and business men to increase their issues, and thereby keep other notes, of doubtful value, from being introduced.

This communication would have been transmitted before but from unforseen circumstances. As the last weekly statement has been prepared for the board, I send a copy for your inspection.

With great respect, your most obedient servant,

W. GUNTON, *President.*

Hon. JOHN SLIDELL,
Chairman, &c. United States Senate.

No. 13.—*General statement of the Bank of Washington, January* 1, 1858.

Capital stock outstanding	$178,160 00	State and other stocks and bonds		$55,262 42
Notes in circulation	92,052 50	Banking house		23,827 70
Individual deposits	207,427 10	Other city lots, assessed value		40,756 99
Due to banks	13,292 15	Legal expenses		3,620 72
Suspense account	767 73	Protest account		132 13
Profit and loss	34,600 97	Bills and notes in suit	$31,454 94	
		Bills and notes current	242,798 25	
				274,253 19
		Due by banks	14,812 15	
		Specie	81,341 63	
		Notes of District banks	10,950 00	
		Notes of other banks	7,638 00	
		Checks on other banks	13,705 52	
				128,447 30
	526,300 45			526,300 45

BANK OF WASHINGTON, *January* 12, 1858. JAS. ADAMS, *Cashier.*

No. 14.—*Weekly statement of the Bank of Washington, January* 9, 1858.

Due to banks	$11,233 18	Due from banks	$11,009 15
Due to depositors	230,786 48	Specie	102,625 76
Due to circulation	89,287 50	District notes and checks	22,379 98
		Notes on other banks	8,645 00
	331,307 16		144,659 89
		Current bills and notes	245,901 91

BANK OF WASHINGTON, *January* 12, 1858. JAS. ADAMS, *Cashier.*

No. 15.—*A synoptical statement of the condition of the affairs of the banks of the District of Columbia.*

LIABILITIES.

	Capital.	Circulation.	Individual deposits.	Due to banks.	Dividends undivided.	Surplus, &c.	Total.
Bank of the Metropolis	$355,300 00	$124,416 76	$316,573 96	$38,658 36	$14,869 57	$21,986 99	$871,803 64
Bank of Washington	178,160 00	92,052 50	207,427 10	13,292 15	.....	Suspense, 767 73	526,300 45
						Surp's, 34,600 97	
Patriotic Bank..... $250,000	.....	.....	31,452 48	66,809 45	.....	.....	246,457 82
Less this am't held by bank, 126,105	123,895 00	23,115 60	Special, 1,185 89				
Farmers and Mechanics' Bank	288,730 00	47,359 00	127,264 14	30,183 51	12,088 36	.....	505,616 00
Bank of Commerce	106,000 00	28,995 00	55,382 46	499 21	.....	16,501 58	207,378 25
	1,052,085 00	315,929 26	639,286 03	149,442 68	26,957 93	73,857 27	2,357,556 17

ASSETS.

	Bills discounted, and loans.	Specie.	Stocks.	Real estate.	Due by banks.	Notes and checks of other bnks.	Protest, loss, expense, &c.	Deficiency, &c.	Total.
Bank of the Metropolis	$572,483 61	$130,464 34	$4,116 32	B. H., $22,375 90	$29,953 21	$96,896 37	$3,360 79	$2,653 10	$871,803 64
	.....	.....	..... Taken	for debt, 4,500 00					
Bank of Washington	In suit, 31,454 94	81,341 63	55,262 42	B H., 23,827 70	14,812 15	32,293 52	3,752 85	.....	526,300 45
	Curr't, 242,798 25	.....	.... Taken	for debt, 40,756 99					
Patriotic Bank	85,893 15	12,409 95	27,020 00	B. H., 14,000 00	60,004 48	8,208 70	116 75	10,768 47	246,457 82
	In suit, 4,536 32	.....	.....	Other, 23,500 00					
Farmers and Mechanics' Bank	349,962 29	58,142 22	233 33	26,388 45	29,199 48	10,150 92	821 03	30,718 29	505,616 01
Bank of Commerce	111,899 58	28,288 35	13,649 80	13,314 36	29,698 06	5,909 09	4,619 01	.....	207,378 25
	1,399,028 14	310,646 49	100,281 87	168,663 40	163,667 38	153,458 60	17,670 43	44,139 86	2,357,556 17

No. 16.] TREASURY DEPARTMENT, *January* 4, 1858.

SIR: Agreeably to your request, I have the honor to enclose herewith, from the records of this department, a copy of a letter addressed to Wm. A. Bradley, esq., president of the Patriotic Bank, Washington, by the Secretary of the Treasury, dated 4th January, 1841, with the statement from the same record, that similar letters were addressed to the other banks of this District as therein stated.

The original communications from those banks referred to, have not been found on the files of the department.

Very respectfully, your obedient servant,

HOWELL COBB, *Secretary of the Treasury.*

Hon. JOHN SLIDELL, *Senate of the United States.*

No. 17.] TREASURY DEPARTMENT, *January* 4, 1841.

SIR: I have to acknowledge the receipt of your letter of the 31st ultimo, enclosing a list of stockholders and the certificate of the president and directors of the Patriotic Bank of Washington, assenting to and accepting the extension of the charter of the said bank upon the terms and conditions contained in the act of Congress of the 3d of July, 1840, which certificate was duly filed in my office on the 31st day of December ultimo, in conformity with the requirements of the said act. I am, &c.,

LEVI WOODBURY,

Secretary of the Treasury.

W. A. BRADLEY, Esq.,
President of the Patriotic Bank of Washington.

Similar letters were addressed to the presidents of the following banks of the District, and the dates of the filing of their several certificates noted, as follows:

Bank of the Metropolis, of Washington, certificate filed December 31, 1840.

Bank of Washington, of Washington, certificate filed Jan. 2, 1841.

Farmers' Bank of Alexandria, of Alexandria, D. C., certificate filed January 2, 1841.

Farmers and Mechanics' Bank of Georgetown, D. C., certificate filed January 2, 1841.

No. 18.] TREASURY OF THE UNITED STATES, *January* 18, 1858.

SIR: In answer to your call of 16th instant, I have the honor to report the following receipts of coin for transfer drafts, viz:

From Richard Smith, Cashier Bank of Metropolis	$114,550
From James Adams, Cashier Bank of Washington	70,000
From C. Bestor, Cashier Patriotic Bank	1,500
From W. Laird, jr., Cashier Farmers and Mechanics' Bank, Georgetown	20,000
From C. E. Rittenhouse, President Bank of Commerce, Georgetown	1,000
Since September 26, 1857	207,050

Very respectfully, your obedient servant,

SAMUEL CASEY, *Treasurer U. S.*

P. CLAYTON, Esq., *Assistant Secretary of the Treasury.*

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 30.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1858.—Ordered to be printed.

Mr. STUART made the following

REPORT.

[To accompany Bill S. 47.]

The Committee on Public Lands, to whom was referred the "Bill confirming locations of land warrants under certain circumstances," report that they have examined the same, and recommend the bill accompanying this report as a substitute therefor, to conform to the suggestions contained in the letter of the Commissioner of the General Land Office, accompanying this report.

GENERAL LAND OFFICE, *January* 26, 1858.

SIR: I have the honor to return, herewith, proposed Senate bill No. 47, and a letter addressed by this office June 23, 1857, to Messrs. Leas & Harsh and others; and in answer to an inquiry made, on the part of the Committee of Public Lands, by A. Ten Eyck, esq., I have the honor to state, that, as existing laws furnish no adequate remedy in the class of cases contemplated by that bill, I would respectfully recommend its passage.

Should no such relief be afforded by Congress, a very large number of locations made with military bounty land warrants, issued under the act of March 3, 1855, must of necessity be cancelled by this office, devolving on it a great amount of extra labor, without any corresponding benefit to the public or the government.

I am, sir, very respectfully, your obedient servant,

THOMAS A. HENDRICKS,
Commissioner.

Hon. CHARLES E. STUART,
Chairman of the Committee on Public Lands, U. S. Senate.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 31.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1858.—Ordered to be printed.

Mr. EVANS made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the memorial of Nathaniel Champe, heir of Sergeant Major John Champe, have considered the same, and submit the following report:

The history and public services of Sergeant Major Champe, of Lee's legion, during the revolutionary war, are well known. The attempt to seize Arnold, after his treason, which was planned by Washington and Lee, and the execution entrusted to Champe, would, if it had been successfully executed, have been one of the most romantic events of the revolution. But his merit was not the less because it failed, as the failure resulted from causes unforeseen and not anticipated. To what extent Campe was remunerated pecuniarily does not appear. It is probable that the promises of Washington were performed. Unless he was rewarded by Washington, there is no evidence that he received any reward in his lifetime. He has been dead half a century, and his descendants are numerous and said to be poor; and if no provision had ever been made for them, the case presents facts which would bring it within the principles adopted in other cases. But it appears that by an act approved July 7, 1838, the widow of Sergeant Champe was allowed a pension for life, commencing from the 4th day of March, 1831, at the rate of $120 a year. By dating the pension back to 1831, she received $840, besides what accrued afterwards. It also appears that, by an act approved the 3d day of March, 1847, there was allowed to his heirs the commutation pay of an ensign for five years, amounting to $1,200, thus allowing to his heirs, as a compensation for his gallant conduct, what he himself was never legally entitled to, as the resolution of October 21, 1780, and the commutation resolve of 1783, included only commissioned officers.

Your committee are therefore of opinion that all has been done for the heirs of Sergeant Major Champe which can reasonably be asked for, and recommend that the prayer of the petitioner be refused.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM No. 32.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1858.—Ordered to be printed.

Mr. POLK made the following

REPORT.

[To accompany Bill S. 107.]

The Committee on Claims, to whom was referred the petition of Ephraim Hunt, report:

This claim is for the pay and bounty alleged to be due to the petitioner for services as a soldier in the war of 1812. It has twice received the favorable action of the Senate, but in both instances failed to receive the final action of the House of Representatives. The case is well stated in the report made to the Senate at the 1st session of the 33d Congress, (No. 359,) as follows, viz:

The evidence in this case presents the following facts: In December, 1812, Mr. Hunt enlisted at Topsham, Maine, as a private in the service of the United States, as a volunteer for one year, and went, with his company, to Plattsburg, New York. He remained in the service until the 25th September, 1813, when he re-enlisted into Captain Buck's company, United States army. This enlistment, according to his own affidavit, and the affidavits of John Dusten and Daniel Greenlee, who swear that they were present at the time of the enlistment and personally cognizant of the fact, was distinctly stated and understood at the time to be for "during the war," and not for "five years." It was, however, held by the officers to be for five years. He continued in the service until the 14th September, 1815, when the war being closed, he claimed that his term had expired, and requested his discharge, which was refused on the ground that the enlistment was for five years.

Believing, as he says, that he had faithfully served out his term of enlistment, he left the army without his discharge, and without having received either his bounty or any pay for the time he had served. The accounting officers decided, on his application for pay, that he had forfeited all claim on the government by the act of desertion.

He is now in necessitous circumstances, advanced in years, and deprived of the use of his hands by the loss of his fingers, and prays that

Congress will cause his pay and bounty, for services rendered in fighting the battles of his country in time of war, be allowed him.

The committee are of opinion, from the evidence presented, that when he enlisted, it was his understanding and intention to enlist for the period of the war, although, by some error, he was enrolled for five years. That upon the termination of the war and the restoration of peace to the country, he thought he had faithfully complied with his engagement, and, under that belief, left the army. The committee do not intend to sanction or excuse the course he adopted, but think he should have remained in service until he could have obtained his regular discharge; still, under the peculiar circumstances of the case, and in view of faithful services rendered during the war and till some time after its close, they are of opinion that the government ought not to withhold from the old soldier the small pittance to which his previous patriotic services had entitled him. They therefore report a bill for his relief.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 33.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1858.—Ordered to be printed.

Mr. POLK made the following *adverse*

REPORT.

[To accompany Bill S. (C. of C.) 108.]

The Committee of Claims, to whom was referred the opinion of the Court of Claims in the case of O. H. Berryman and others, report:

The claimants in this case are the officers and crew of the United States schooner "On-ka-hy-e."

On the 24th of January, 1848, the the "On-ka-hy-e" captured the barque "Laurens," alleged to be then engaged in the slave trade, and brought her into the port of New York, where she was libelled and adjudged by the proper tribunal to be forfeited to the captors. There was found on board the "Laurens" the sum of $18,992 in specie, which was taken possession of by the United States marshal, in obedience to the process of the court, and which he was subsequently ordered to pay into the registry of the court, but failed to do. In consequence of this defalcation of the marshal, the money, which had come into his hands in his official capacity, was lost to the claimants. The Court decide that in virtue of sundry acts of Congress and proceedings in the courts, to which they refer, "the money is in the treasury," "for it has been so adjudged, and all parties are concluded by that judgment." They say: "It seems to have been supposed that this was an attempt to charge the United States, on account of the defalcation of the marshal; but such is not the claim. It is the United States who set up the default of their officer and agent, the marshal, as a defence to the claim." "The judgment of the district court settles that the sum of $20,664 69 is in the treasury for the purpose of distribution," and that "it is the Secretary of the Navy who is to direct the distribution of the money, and not the district court."

It is therefore adjudged that the claimants are entitled by law to recover the money.

Judge BLACKFORD dissents. His opinion is, that the decree of the district court does not sanction the opinion that the money which was converted by the marshal to his own use ought to be considered to be in the treasury of the United States for distribution; that all that the

decree does is merely to order that the balance realized from the sale of the vessel, and actually paid into the registry of the court, should be paid into the treasury of the United States for distribution, and that the government is not liable for any part of the money which, owing to the marshal's defalcation, never reached the registry of the court or the treasury of the United States. He says: "If the government is liable for that large sum, embezzled by the marshal, it is because there is an obligation on the part of the government to save all persons harmless against the official misconduct of its ministerial officers." The committee concur in this opinion. If, as the Court say, "the $20,664 69 is in the treasury of the [United States] for the purpose of distribution," then the act of 1849 (9 Stat., 378) provides that "such parts thereof as may belong to the officers and crews of the vessels of the navy shall be paid to them under the direction of the Secretary of the Navy," and no further legislation is necessary. But, in point of fact, it is admitted that the money never came into the treasury, and therefore the state of facts had not arisen which empowered the Secretary of the Navy to direct its payment, or which entitled the claimants to demand it, under the law. The act does not declare that all vessels libelled and adjudged to be lawful prize, or which are, in fact, lawful prize under the law, shall be paid for to the captors out of the treasury until they have acquired the right to such payment by first causing the money to be paid into the treasury for that express use. The government assumes no other responsibility in regard to it than that of an agent or trustee, to receive and distribute such moneys as shall, by due process of law, be placed in its hands for that specific purpose. The government acquires no property or interest in them, and its whole action, so far as the receipt and distribution is concerned, is a gratuitous service for the benefit of the captors. The whole proceedings, therefore, from the seizure of the vessel until its proceeds reach the treasury, are at the sole risk of the parties in interest. They are allowed to invoke the power and to employ the tribunals and officers of the United States to secure the private rights which they may acquire to the property, but the government does not insure them success. They may fail, after the seizure, to bring the prize safely to port; or they may fail, by a mistaken or erroneous decision of the court, to obtain a decree of condemnation; or they may fail, by some mistake or laches of the clerk or marshal, or by some negligence on their own part, to have the proceeds duly paid into the treasury; and in either event, the case has not arisen which would authorize the Secretary of the Navy to cause the money to be paid, or which entitles them to demand it. No money can be lawfully paid out of the treasury without an appropriation made by act of Congress, and the act only authorizes payments of this character out of the moneys arising from the proceeds of the prizes.

In this case it is admitted that the money was never actually paid into the treasury, and that therefore there were no funds in the treasury which these parties could demand as belonging to them.

The committee, after a careful consideration of the case, concur substantially in the opinion delivered by Mr. Justice Blackford, that the claimants have no right against the government, and they recommend

that the bill "for the relief of O. H. Berryman and others" do not pass.

The opinion of Judge Blackford is hereto annexed as a part of this report.

BERRYMAN AND OTHERS *vs.* THE UNITED STATES.

Judge BLACKFORD'S dissenting opinion:

I dissent from the judgment of the Court in this case.

The claimants are the officers and crew of the schooner On-ka-hy-e, a commissioned vessel of the United States of America, belonging to the navy.

This schooner, in January, 1848, captured, on the high seas, the barque Lawrence, charged with being engaged in the slave trade.

In March, 1848, the said barque was brought into the port of New York, by the captors, for adjudication, she having on board eighteen thousand nine hundred and ninety-two dollars in specie.

Afterwards, on the 15th of said month of March, a libel was filed in the district court of the United States for the southern district of New York, by the district attorney, against the said barque and her cargo.

Upon the filing of the libel, the usual process was issued, commanding the marshal (Ely Moore) "to attach the said barque, her tackle, guns, goods, and effects, found on board thereof, and specie, and to detain the same in his custody until the further order of the court," &c.

On the said 15th of March, the marshal, (Moore,) in obedience to said process, attached said barque, "her tackle, &c., and the goods and effects found on board thereof, therein described."

On the 21st of April, 1849, the court ordered the said marshal (Moore) to pay said specie, being about twenty thousand dollars, into the registry of the court.

On the 25th of the same month of April, the court ordered that said marshal (Moore) pay into the court eighteen thousand nine hundred and ninety-two dollars, being the amount of said specie, on or before the 1st of May then next following, or that an attachment issue against him.

On the same 25th of April, the court also ordered one Peck, a deputy marshal, to pay said money into court, or that he be attached.

On the 1st of May, 1849, the said money not having been paid into the registry, the court ordered an attachment to issue against said marshal, (Moore,) returnable forthwith; and on the next day an attachment was also ordered against the said deputy marshal.

Various answers to the libel were filed, and several depositions taken.

The said district court, on the 3d of July, 1849, rendered the following decree:

"It is considered by the court, that the said barque Lawrence, at the time of her arrest and capture, as set forth in the pleadings, being a vessel belonging to the United States, was employed and made use of in the transportation or carrying of slaves from one foreign coun-

try or place to another, to wit: from the western coast of Africa to Brazil, within the intent and meaning of the act of Congress, approved May 10, 1800, in such case made and provided. Wherefore, it is ordered, adjudged, and decreed by the court, that the said barque Lawrence, her tackle, furniture, appurtenances, and the goods, property, and effects, found laden on board her, be condemned and forfeited to the use of the United States, the libellants in this cause, pursuant to the provisions of the act of Congress in that behalf. And it is further ordered and decreed that the libellants recover their taxed costs against the claimants who have intervened in this cause. And on motion of J. Prescott Hall, esq., proctor for the libellants, it is ordered that the clerk of this court issue a *venditioni exponas* against the said barque Lawrence, her tackle, apparel, and furniture, and the goods, property, and effects, found laden on board, and returnable on the first Tuesday of August next."

The following return was afterwards made to the said writ:

"In obedience to the above precept, I have sold the above named vessel and cargo, and such sale amounts to four thousand seven hundred and twenty dollars and seven cents; which sum I have paid to the clerk of this court, as I am above commanded.

"Dated this 8th day of November, 1849.

H. F. TALLMADGE, *U. S. Marshal.*"

Petitions of part of the crew of the capturing vessel having been filed, the court, on the 8th of January, 1851, made the following order:

"Upon the filing of the petition of intervention of John H. Wilkins and others, captors of the barque Lawrence, &c., (against which a final decree of condemnation has been made herein,) praying for a decree of distribution of the condemned property and its proceeds, according to law: It is ordered that the usual monition do issue; and it is further ordered that a commission do issue herein, under the seal of this court, directed to Smith Barker, esq., counsellor at law, of the city of New York, appointing him prize commissioner herein. And it is further ordered that the said commissioner do proceed with all reasonable diligence to take the testimony herein, conformably to the rules of this court, for the purpose of ascertaining the amount subject to distribution, the persons entitled as distributees, and the several sums to which they are respectively entitled; and return the same into court, together with his report thereon, on or before the return day of the monition."

In May, 1851, the following report of the said prize commissioner was filed:

"Report of Smith Barker, the prize commissioner, appointed herein.

"To the Hon. Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

"The report of Smith Barker, prize commissioner, duly appointed herein by order of the court, respectfully represents:

"That in compliance with the requisitions of the commission to

him issued, he has proceeded to take testimony concerning the subject-matter to him referred; and the said testimony is duly returned into court, accompanying this report thereon.

"A final decree of condemnation having been pronounced herein by the court against the property captured, the questions remaining for determination are: 'how shall the captured and condemned property or its proceeds be divided? and to whom shall it be paid as lawful distributees? and in what proportions?'

"And first, how shall the condemned property or its proceeds be distributed?

"The testimony clearly establishes the fact of the superiority of the capturing force both in men and arms; and, therefore, were this a prize of war, under the naval laws of the United States, the capture not resulting from any extraordinary hazard, or from the exercise of any great or unusual skill or bravery, there would be no doubt that the prize, or its proceeds, would be subject to division and distribution, in equal proportions, between the government and the captors. But this was a capture made by a government vessel of a merchant vessel, found violating the laws of the United States which prohibit the slave trade, and a very serious question has arisen whether, under the terms of that law, the captors are not entitled to the entire proceeds of the prize.

"If the act of May 10, 1800, which is entitled 'An act in addition to the act entitled an act to prohibit the carrying on the slave trade from the United States to any foreign place or country,' were the only law of the United States under which this forfeiture has been incurred, it might perhaps be difficult to escape the conclusion that the captors would be entitled to the entire proceeds of the capture; and still more difficult would it be to avoid this result, were it not necessary in these proceedings to resort to, and be governed by, the provisions of the general law of April 23, 1800, entitled 'An act for the better government of the navy of the United States.'

"By the fourth section of the act of May 10, 1800, it is provided, 'that it shall and may be lawful for any of the commissioned vessels of the United States to seize and take any vessel employed in carrying on trade, business, or traffic, contrary to the true intent and meaning of this and the act to which this is an addition, and such vessel, together with her tackle, apparel, and guns, and the goods and effects (other than slaves) which shall be found on board, shall be forfeited, and may be proceeded against in any of the district or circuit courts, and shall be condemned *for the use of the officers and crew of the vessel making the seizure, and be divided in the proportion directed in the case of prize.*' Now, it may very fairly be contended, that the *division* here spoken of is a division among the 'officers and crew of the vessel making the seizure,' because the act certainly indicates *no other party* for whose use the prize is to be condemned. Nor is this construction at all weakened, but rather it is strengthened, by the provisions of the seventh section of the act, which reads as follows: 'That the forfeitures which shall hereafter be incurred under this act, or the said act to which this is an addition, *not otherwise disposed of*, shall accrue and be, one moiety thereof to the use of the informer, and the

other moiety to the use of the United States, except where the prosecution shall be first instituted on behalf of the United States, in which case the whole shall be to their use.' Now the 1st, 2d, and 3d sections of the act provide for distinct cases of penalties and forfeitures, to be incurred by citizens having an interest in vessels employed in the slave trade, by citizens serving on board any vessel of the United States employed in the slave trade, and by citizens serving on board any foreign vessel in that employment. These are evidently the forfeitures alluded to in the seventh section as 'not otherwise disposed of:' first, because for their recovery the mediation of an informer is supposed; and second, because in the sections imposing the forfeitures there are no provisions for their disposition.

"The forfeiture imposed by the fourth section, under which the prize in this case was taken and the condemnation had, *cannot* be alluded to in the seventh section: first, because it is not such a forfeiture as is established by the aid of an informer; and second, because the disposition of that forfeiture is *otherwise* and especially provided for in the section imposing it, viz: the property 'shall be condemned for the use of the officers and crew making the seizure.'

"It is therefore apparent that if the provisions of this act alone were to be consulted on the question of distribution, the captors would present a very strong claim to the entire proceeds of the capture. But in order to ascertain *the proportions* according to which the proceeds of the prize are to be distributed among the lawful distributees, it is necessary to resort to the provisions of the general act 'for the better government of the navy of the United States,' passed April 23, 1800; and here we find in the fifth section of that act the following sweeping provision: 'That the proceeds of *all* ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall, when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors, and when of inferior force, shall be divided equally between the United States and officers and men making the capture.' To this it may perhaps be answered, that this law evidently refers only to captures made in time of war, and also, that being a law seventeen days *earlier* in date than that under which this capture was made, its provisions cannot be construed to control those of the later act. But when it is considered that no good reason can be urged in favor of a law entitling the captors in a case like this to the *entire* proceeds of the capture, which is not of equal force in every other case provided by the laws in which they are entitled to a *moiety* only, it is proper to consider the provisions of the act of April 23, not as controlling, but as explanatory of those of the act of May 10, 1800. Had the latter act declared that the property should be condemned to the *exclusive* 'use of the officers and crew of the vessel making the capture,' 'to be divided' *among them* 'in the proportion directed in the case of prize,' it would be free from all ambiquity, and require no explanation from the act passed seventeen days before, directing 'the proportion in the case of prize.' But the words 'exclusive' and 'among them' are not in the law, and hence the distributees are not distinctly indicated by the law. This being *the case, the* general provision in relation to the division of the pro-

ceeds *of all prizes* contained in the fifth section of the act of April 23, may very properly be regarded as explanatory of the provision of the fourth section of the act of the 10th May following.

"On the 2d of March, 1807, Congress passed an act 'to prohibit the importation of slaves into the United States from and after the first of January, 1808.' By the seventh section of said act it is provided that the proceeds of vessels, &c., taken in contravention of the law, 'shall be divided equally between the United States and the officers and men who shall make the seizure.' The same provision is also contained in the first section of the act of April 20, 1818, being an act in addition to the one last mentioned; and with much greater particularity is that provision declared in the first section of the act of March 3, 1819, entitled 'An act in addition to the acts prohibiting the slave trade.'

"With these considerations, although it must be conceded that the question is not free from embarrassment, it is submitted, that inasmuch as the captured vessel was of inferior force to that of the captors, the proceeds of the prize should be divided equally between the United States and the officers and crew of the vessel which made the capture.

"The next question is, who are entitled to be distributees as captors?

"The testimony shows that the capture was made by the officers and crew of schooner On-ka-hy-e, a commissioned vessel of the United States of America, and belonging to the navy thereof. If any other public ship or vessel had been in sight at the time the capture was made by the officers and crew of the On-ka-hy-e, the officers and crew of such other ship or vessel would, in law, be considered as taking part in the capture, and under the seventh subdivision of section sixth of the act of April 23, 1800, would be entitled to share with the officers and crew of the On-ka-hy-e; but the testimony conclusively establishes the fact that no other vessel was in sight, and therefore the moiety of the proceeds of the condemned property subject to distribution among the captors should be divided according to the provisions of the said sixth section of the act last above cited.

"An authenticated copy of the muster-roll, showing the officers and men who were on board the On-ka-hy-e at the time of the capture, namely, on the 24th day of January, A. D. 1848, has been produced from the Navy Department, and will be found annexed to the testimony herewith reported. In accordance with that list and with the provisions of the law of 1800, a schedule of distribution will be found at the termination of this report.

"The property condemned herein as lawful prize by a decree of this court made on the 30th day of July, 1849, consisted of the barque Lawrence, her tackle, apparel, &c., and the effects found on board, which consisted of a quantity of specie, amounting to the sum of eighteen thousand nine hundred and ninety-two dollars.

"By the defalcation of the late marshal of the United States for the southern district of New York, the said specie never reached the registry of the court. It came into his custody in his official capacity, and was converted to other uses. It came into his possession in the month of March, 1848, and it does not appear that any attempt was

made to enforce a compliance with the rule of the court, requiring its deposit in the registry of the court, until more than a year after that time. The record shows the proceedings which were then taken to obtain from him the fund, and the fruitlessness of all efforts to that end. The specie, when first received by the marshal or his deputy, was deposited in the Mechanics' Banking Association. It was paid out, it appears, from time to time, upon the checks of the deputy marshal, the deposit having been, at the request of the deputy, changed by the bank, and placed to his credit, instead of that of the marshal. An action is now pending in the State court against the bank in favor of the government, to compel a repayment of this fund, upon the ground of its illegal payment by the bank to the order of the deputy. Whether anything from any quarter, either from the bank or from the sureties upon the official bond of the marshal, will ever be realized to replace this fund thus diverted, is a question of interest to the government, but in a pecuniary point of view cannot be so regarded to the captors. So far as their rights and interests are concerned, the fund should, of course, be considered as in the treasury of the United States; nor can there be any doubt that it will be, as it ought to be, paid to them therefrom, by the proper authority, under and in accordance with a decree of distribution herein to be made by the court.

"It will not, probably, for a moment, be contended that the captors should be delayed in their receipt of the moiety of the proceeds of the capture, to which the law entitles them, by reason of the defalcation of the agent of the government, who, in that capacity, was entrusted with its possession, and has not paid it over. If it would be right to delay the captors until the termination of the litigation now pending, or which may be hereafter pending, to recover the money, for the same reason they should be subjected to the hazards of the result of that litigation; and it cannot be supposed that such a proposition could be seriously entertained by any person. So far, therefore, as this report is concerned, the commissioner considers it his duty to regard this fund as a subject of distribution in precisely the same manner as though the attorney for the libellants had enforced a compliance by the marshal with the rule of this court in the month of March, 1848, and the money were now in the registry of the court.

"The specie condemned and subject to distribution herein amounts to $18,992 00

"The gross proceeds of the sale of the vessel, with her tackle, apparel, &c., as appears by the return of the marshal to the writ of *venditioni exponas*, was 4,720 07

"Making a total of 23,712 07

"The proceeds of the sale were duly deposited in the registry of the court.

"It appears by the vouchers on file, and by a copy of the clerk's cash account, that large payments have, from time to time, been made from this fund, under the order of the court, to defray the various expenses attending the prosecution of the libel, and the costs and disbursements in the safe-keeping and sale of the property.

"By the aforesaid cash account of the clerk, which is annexed to the testimony reported herewith, it appears that the sums of cost, expenses, and disbursements so paid, under the order of court, amount, in the aggregate, to the sum of $3,047 38.

"The prize property and its gross proceeds, as above stated, amount to $23,712 07

"Deduct from this the amount of costs thus far incurred and paid 3,047 38

"And the sum remaining subject to distribution, after defraying the bills of cost, if any, not yet paid, together with the expense of these proceedings, is 20,664 69

"Your commissioner therefore reports that, after paying the costs, if any still unpaid, incident to the proceedings upon the libel for condemnation of the prize property, and after paying the proper costs and charges incurred in the proceedings for a decree of distribution of the proceeds of said property condemned as lawful prize, the sum remaining of said sum of $20,644 69 should be divided into two equal proportions; that one of the said moieties should remain in the treasury of the United States as a portion of the navy pension fund, to which fund the share of the proceeds of prize property to which the government is entitled is appropriated by an act of Congress, and that the other moiety should be paid to the captors, in accordance with the naval laws of the United States, which provide for the distribution of prize money. And it appearing that there now remains in registry of the court a portion of the proceeds of the prize property, amounting to the sum of $1,672 69, that the costs and expenses above mentioned should be paid from that fund, and the balance, if any, be transferred to the treasury, in order that the distribution, under the decree of this court, to the captors entitled, may be made by the Navy Department of the government.

"And your commissioner, after a careful application of the rules of distribution established by the said naval laws of the United States, to the list of the officers and crew of the schooner On-ka-hy-e, who were on board of the said vessel at the time of the capture of the barque Lawrence, reports the following detail of distribution of that portion of the prize fund which by law belongs to the captors:

"1st. To Otway H. Berryman, lieutenant and commander of the On-ka-hy-e at the time of the capture, three twentieths.

"2d. R. T. Renshaw, passed midshipman and acting master; to George Wells, lieutenant; to Alexander Robinson, assistant surgeon, each one third of four twentieths.

"3d. To Leonard Paulding, passed midshipman; A. T. Byrens, midshipman; Frank Zantzinger, captain's clerk, each one third of three twentieths and a half.

"4th. To Edward Williams, carpenter's mate; John Hopkins, quartermaster; W. B. Miller, do.; and Henry Stamworth, ship's cook, each one fourth of two twentieths and a half.

"5th. To William Thompson, ordinary seaman; Wellington Lancaster, do.; George Wilson, do.; Robert Wilson, seaman; Charles

Smith, 2d do.; Richard Mintough, ordinary seaman; William Howard, do.; Thomas Moore, do.; Joseph Webster, do.; Bradford Potter do.; Thomas H. Disney, seaman; James Wilson, do.; John H. Wilkins, ordinary seaman; John Bogert, landsman, William O. Coates, first class boy; Charles Betts, ordinary seaman; John Pearsall, do.; Charles Smith, 3d, do.; William Potter, seaman; Joseph Relatic, do.; Francis Smith. do.; Edward Smith, do.; Joseph Ward, do.; John M. Kay, do.; and to William C. Leeson, do.; each one twenty-fifth of seven twentieths.

"All which is respectfully submitted.

"SMITH BARKER,
"*Commissioner.*"

Filed May 16, 1851.

The commissioner in the above report expresses the following opinions:

1. That the fund for distribution should be distributed as follows: One half to the United States, and the other half to the captors.

2. That the $18,992 in specie, *which the marshal failed to pay into the registry, but converted to his own use,* should be considered as in the treasury of the United States, subject to a decree of distribution.

On the same day on which said report was filed, the court rendered a decree as follows:

"This cause having been submitted on the pleadings and testimony and the report of Smith Barker, esq., counsellor at law, prize commissioner duly appointed by the court, and the same having been duly read and considered, it is ordered and decreed that the clerk of the court do pay out of the fund in the registry the costs and expenses which may yet remain unpaid in the proceedings on the original libel, together with the costs and expenses upon the libels for distribution of the proceeds of the property condemned, with the commissioner's fees herein allowed by the court, and that the balance, if any, remaining of said fund, portion of the proceeds of the said prize property, be paid into the treasury of the United States for distribution thereupon, in conformity with the report of the commissioner of prize in that behalf, as follows:

"Of the moiety of the prize proceeds to which the captors are entitled: 1st. To Otway H. Berryman, lieutenant and commanding officer of the capturing vessel, three twentieths. 2d. To R. J. Renshaw, passed midshipman and acting master; George Wells, lieutenant; Alexander Robinson, assistant surgeon, each one third of four twentieths. 3d. To Leonard Paulding, passed midshipman; A. T. Byrens, midshipman; Frank Zantzinger, captain's clerk, each one third of three twentieths and a half. 4th. To Edward Williams, carpenter's mate; John Hopkins, quartermaster; W. B. Miller, quartermaster; Henry Stamworth, ship's cook, each one fourth of two twentieths and a half. 5th. To William Thompson, ordinary seaman; Wellington Lancaster, do.; George Wilson, do.; Richard Mintough, do.; William Howard, do.; Thomas Moore, do.; Joseph Wilson, do.; Bradford Potter, do.; Charles Betts, do.; John Pearsall, do.; Charles Smith, 3d, do.; Robert Wilson, do.; Charles Smith, 2d, do.; James

Wilson, do.; Thomas H. Disney, do.; John Retalic, do.; William Potter, do.; Francis Smith, do.; Edward Smith, do.; Joseph Ward, do.; John McKay, do.; William C. Leeson, do.; John Bogert, landsman, do.; William C. Coles, first class boy; John H. Wilkins, ordinary seaman, each one twenty-fifth of seven twentieths.

"And it is further ordered, that the prize commissioner herein be allowed and paid, as his commission in the premises, three per cent. upon the amount of property and its proceeds condemned by the decree of the court."

The first point decided by the majority of this Court is, that the district court of the United States confirmed, substantially, the report of the commissioner, (Barker.) I differ from the Court on that point. That this matter may be well understood, I have copied into this opinion both the report of the commissioner and the decree of the district court.—(See the transcript of the record of the district court filed with the papers in this Court.)

The report of the commissioner says: That the specie, $18,992, [*which, by the defalcation of Moore, the marshal, was not paid into the registry of the court, nor into the treasury of the United States,*] ought to be considered as in the treasury of the United States, and ought to be paid therefrom to the captors in accordance with a decree of distribution to be rendered by the court. The same report also says, that there was a sum of $20,664 subject to distribution.

Now, I think it is clear that the decree of distribution, rendered by the district court, does not confirm, either in form or substance, those erroneous opinions of the commissioner.

It will be recollected that, as before stated, the Lawrence and cargo were sold by Tallmadge, the successor of the defaulting marshal, for $4,720 07, which sum Tallmadge, as marshal, paid into the registry of the court. *That was the only money arising from the prize that was ever paid into the registry.*

The decree of the district court, and which is hereinbefore copied, is substantially as follows: It is ordered and decreed that the clerk pay, out of the fund in the registry, (that is, as I understand it, out of the $4,720 07,) the costs * * * * * * * * * *; and that the balance, if any, remaining of said fund (that is, as I understand it, of the $4,720 07) * * * * * * * be paid into the treasury of the United States for distribution thereupon, in conformity with the report of the commissioner of prize in that behalf, as follows: Of the moiety of the prize proceeds, &c.

I will not dwell upon this matter. The decree does not, in the remotest manner, countenance the erroneous opinion of the commissioner, that the $18,992, conveyed by the marshal (Moore) to his own use, ought to be considered to be in the treasury of the United States for distribution. Nor does the decree sanction the erroneous statement of the commissioner, that there was the sum of $20,664 69 subject to distribution. All the decree does is merely to order, that, after deducting the costs and expenses from the $4,720 07, paid into the registry by Tallmadge, the balance should be paid by the clerk into the treasury of the United States for distribution, which balance was $1,672 69, less the subsequent expenses.

The majority of the Court also decides, that the district court of the United States had no jurisdiction to render the judgment of distribution.

I shall not stop to inquire whether the district court had such jurisdiction or not. It is a question of no importance in this case. The sum to be distributed, according to the facts and the order of the Court, was only $1,672 69; and it does not even appear that that small sum was ever paid into the treasury of the United States.

There is an act of Congress, approved March 3, 1849, as follows:

"That from and after the passage of this act all prize money arising from captures made by the vessels of the navy of the United States, received by the marshal who shall make sale of such prizes, shall, within sixty days after such sale, deposit the net proceeds, after paying all charges, as now provided by law, into the treasury of the United States; and all money now in the hands of prize agents shall also be deposited in the treasury, to be distributed as now provided by law; such part thereof as may belong to the officers and crews of the vessels of the navy, shall be paid to them under the direction of the Secretary of the Navy; and the law authorizing the appointment of prize agents is hereby repealed."—(9th Stat. at Large, p. 378.)

Now admitting, for argument's sake, that this act of Congress, as the claimants contend, takes from the district court the authority of saying how prize money shall be distributed, and gives that power to the Secretary of the Navy, I am at a loss to know how the C urt of Claims has anything to do with the subject. If the district courts of the United States are divested of jurisdiction in such cases, because the act of 1849 gives the jurisdiction to the Secretary of the Navy, the same act, for the same reason, excludes the Court of Claims of any jurisdiction over the matter. The Court of Claims is a court of limited jurisdiction, and can take no cognizance of any matter which, by law, is referred to another tribunal.

Again, there is no liability of the United States in these cases of prize, except for the payment, to the parties entitled, of the prize money *actually paid into the treasury*. Now, there is no allegation in the petition of the claimants, nor is there any evidence, that any part of the prize money in question has been received by the United States, or been paid into their treasury. The decision of the majority of the Court is against the government for the sum of $20,664 69. That sum is made up of two items, namely, the $18,992, which the marshal (Moore) converted to his own use, and of the $1,672 69, the balance of the proceeds of the sale of the Lawrence and cargo. As to the item of $18,992, it is impossible, in my opinion, to make the government liable for that. No part of that money, *owing to the marshal's defalcation*, ever reached the registry of the court, or the treasury of the United States. If the government is liable for that large sum embezzled by the marshal, it is because there is an obligation on the part of the government to save all persons harmless against the official misconduct of its ministerial officers. I recognize no such principle. Judge Story takes the correct view of this subject. The following is his language: "In the next place, as to the liability of

public agents for torts or wrongs done in the course of their agency, it is plain that the government itself is not responsible for the misfeasances, or wrongs, or negligencies, or omissions of duty of the subordinate officers or agents employed in the public service; for it does not undertake to guaranty to any persons the fidelity of any of the officers or agents whom it employs; since that would involve it, in all its operations, in endless embarrassments, and difficulties, and losses, which would be subversive of the public interests; and indeed, laches are never imputable to the government."—(Story on Agency, sec. 319.) The claimants are the losers either of the whole or of the one half of the $18,992. The remedy, if any, for such loss, is not against the United States, but against the defaulting marshal (Moore) and his sureties, on their bond, or against the marshal alone, or against any other person to whose default the loss can be traced. If there is no such remedy, that is no reason that the government should pay over money which it never received.

With regard to the other item of $1,672 69, there is no allegation in the petition, nor is there any proof, as before said, of its payment into the treasury of the United States. It is true, the district court ordered that balance, less the subsequent expenses, to be paid into the treasury; but that is the last we hear of it. Were we even to suppose that the clerk complied with the order, and paid said small balance into the treasury, we should be also bound to suppose, at the same time, that the money was paid over by the proper department to the persons entitled to it. But we have no right to indulge in suppositions on the subject. If the money was paid into the treasury the claimants should show it.

The claimants, in my opinion, have no right against the government to either of the items which make up their large claim of $20,664 69; nor have they any right against the government to any part of that claim. A sufficient reason for that opinion, were there no other, is, *that there is no proof that a single dollar of said money was ever paid into the treasury of the United States.*

For the foregoing reasons, I dissent from the judgment of the Court in this case.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 34.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1858.—Ordered to be printed.

Mr. FOSTER made the following

REPORT.

[To accompany Bill S. 53.]

The Committee on Pensions, to whom was referred the petition and papers of John McVey, asking for a pension, report:

That the petitioner alleges that he was a volunteer from Kentucky in the war of 1812; that at or about the time of the battle of the Thames, in Canada, he was wounded in the ankle by the falling of a plank upon him; but as there is no testimony, beside his statements, as to the essential facts, your committee do not feel authorized to recommend a compliance with petitioner's prayer, and therefore report adversely.

Resolved, That the prayer of the petitioner be not granted.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 35.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Ordered to be printed.

Mr. EVANS made the following

REPORT.

[To accompany Bill S. 113.]

The Committee on Revolutionary Claims, to whom was referred the petition of the heirs of Lieutenant Nathan Weeks, for seven years' half-pay, and the back pay due to him at the time of his death, having had the same under consideration, respectfully report:

It is satisfactorily proved that Nathan Weeks was a lieutenant in Colonel Israel Angell's regiment, of the Rhode Island line, in the continental army, and that he was killed in the battle of Monmouth, in New Jersey, in 1778, leaving only one son, John Weeks, then a minor. It appears from the public documents that he received a bounty land warrant; but there is no evidence that the said minor ever received the seven years' half-pay of his father, under the resolution of August, 1780. Indeed, the proof to the contrary is satisfactory. The petitioners also ask the payment of a sum of money which they allege was due to him at the time of his death. The revolutionary records here afford no evidence of this. It is stated in a certificate of the secretary of State of Rhode Island that, in the records of his office, there appears to be entered opposite to his name the figures £36 10*s.*; but by whom made does not appear. The committee do not consider this as sufficient evidence of a debt, but are well satisfied that the petitioners are entitled to the seven years' half-pay of a lieutenant of infantry, and report a bill for its allowance.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 36.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Bill S. 114.]

The Committee on Foreign Relations, to whom was referred so much of the message of the President of the United States as relates to the claim made by the government of Spain of certain Spanish subjects in the case of the schooner Amistad, and recommending that provision be made by law for its payment, have had the same under consideration and report:

The justice of this claim, and the obligation of the United States to provide for its payment, has been, as stated by the President in his message, recognized by more than one of his predecessors. It has also met, heretofore, the favorable consideration of the Senate. At the session of 1851–'52 it was the subject of a special report of the Committee on Foreign Relations of the Senate. The committee, entirely concurring in the views taken in that report, adopt them, and now report accordingly.

It appears that, on the 26th of August, 1839, the Spanish schooner called the "Amistad" was taken possession of by Captain Gedney, an officer of the navy of the United States, then in command of one of our public vessels. The "Amistad" was found at anchor on the coast off Long Island, Connecticut, about three-fourths of a mile from the shore. The seizure was made at the request of two Spanish subjects, named, respectively, Ruiz and Montez, residents of the island of Cuba, then on board the vessel; and she, with her entire cargo, was carried, with all on board, into the port of New London, in Connecticut.

In the course of judicial proceedings which were there instituted before the district court of the United States, and which commenced in a claim for salvage on the part of the officer making the seizure, the following facts were elicited: That the "Amistad" was a Spanish coasting vessel, owned by her captain, a Spanish subject and resident of Cuba; that, on the 27th June, 1839, she cleared, in due and regular form, at the port of Havana, in that island, for Puerto Principe, in the same island. There were then on board, besides the captain and owner, a slave named "Antonio," the property of the master, and

the two passengers, subjects of Spain, residing in Cuba, name Ruiz and Montez. The cargo, in addition to various merchandise, owned in part by said Ruiz and Montez, and in part by merchants in Cuba, consisted of fifty-three negroes, certified, in passports signed by the captain general of Cuba, to be slaves, the property of said Ruiz and Montez. That, on the voyage, these negroes revolted, killed the captain and cook, severely wounded one of said passengers, and succeeded in taking possession of the vessel. That two of the sailors were set adrift in a boat belonging to the schooner, and the negroes compelled the said Ruiz and Montez to navigate the vessel, directing them to steer for the coast of Africa. That the vessel continued at sea, in possession of the negroes, (the passengers availing themselves of all opportunity to direct her course towards the coast of the United States,) until land was made, where, being short of provisions and water, they anchored, as above stated, for the purpose of procuring those supplies. When discovered, a party of the negroes were on shore. These were captured by the naval officer and returned to the vessel, when the whole were taken by him, as stated above, into New London. The judicial proceedings terminated in a decree for salvage, under which the vessel and cargo, the negroes excepted, were sold. The fifty-three negroes were declared to be free, and were never restored to those claiming them. The boy "Antonio," claimed as the property of the murdered captain by the Spanish consul, and admitted as such throughout, was detained in custody during these proceedings, and then secreted and sent away to New York—by whom, it does not appear. But the consul made diligent search for him in that city, but never recovered him. And, to crown the whole, the two gentlemen on board the vessel, Ruiz and Montez, were imprisoned for months, under various pretexts, pending the judicial trials, and then suffered to depart, stripped of all the valuable property they had with them on board the vessel when seized by an officer of this government.

Pending the judicial proceedings, the district attorney of the United States filed a suggestion before the district court, setting forth that a claim for the said vessel and cargo had been made to the government of the United States, by the Spanish minister at Washington, claiming that the same was the property of Spanish subjects, and should be restored to them, as required by treaty between the two governments.

The vice-consul of Spain for the State of Connecticut filed a libel, claiming the boy Antonio as the property of the deceased master of the vessel. And the negroes, (with the exception of Antonio,) in answer to the claim for salvage, denied that they were slaves—alleging that they were natives of Africa, then recently brought to Havana in violation of the laws of Spain prohibiting the slave trade, and under which laws they were free.

It appears that, immediately after this capture—that is to say, in September, 1839—the minister of Spain accredited to this government made a formal demand of the Secretary of State for the restoration of the vessel and cargo entire, under the treaty, which was followed in October by a further demand from the successor of that minister for the release of Ruiz and Montez, then imprisoned in the common jail at New York.—(See Ex. Doc. No. 185, 1st session 26th Congress.)

In February, 1842, this claim was made the subject of a special message to the House of Representatives by President Tyler, communicating a further correspondence between the minister of Spain and the Secretary of State during the year 1841, in which the demand was strenuously urged on this government.—(See Ex. Doc., H. R., No. 191, 3d session 27th Congress.)

In January, 1844, President Tyler communicated to the House of Representatives a further correspondence with the Spanish minister, reiterating and pressing his former demand.—(See Ex. Doc., H. R., No. 83, 1st session 28th Congress.

President Polk again brought the subject before Congress, as recited in the resolution of the Senate, strongly recommending that the claim should be paid; and from the correspondence communicated by the Secretary of State at the last session, under a call from the Senate, it appears that this claim continues to be strenuously urged on the part of Spain before the Executive, in terms of the strongest and most just remonstrance. The foregoing narrative is given to show that Spain has been in nowise remiss in urging this demand—making it, in the opinion of the committee, the more incumbent on Congress to pass finally on the subject.

The courts of the country having taken cognizance of, and made a final disposition of the subject, so far as the jurisdiction assumed by them is concerned, it remains only to be determined whether the United States are under treaty obligation, nevertheless, to indemnify these claimants.

For the due and proper observance of treaty stipulations nations look only to the contracting power—that is to say, to the government. If the treaty with Spain required that this vessel and cargo should have been delivered up to the Spanish claimants, the obligation so to do rested upon this government, so far as Spain was concerned. And it is no answer to Spain, neither can the government exonerate itself towards her, or in the eyes of other nations, by saying that the judiciary of the country assumed jurisdiction of the subject, and thus withdrew it from the control of the government which made the treaty, and which became responsible for its observance.

By the Constitution of the United States the judiciary is constituted an independent department of the government, and its jurisdiction clearly defined; and it nowhere appears that in controversies between the United States and foreign nations, arising under treaties between the respective powers, the determinations of the judiciary are to bind the contracting parties. The judiciary is a passive department; it acts only through prescribed forms, and when its authority is invoked by parties designated in the Constitution, for causes stated in the Cconstitution; its judgments are binding only upon parties to the cause and the privies of such parties. This is the universal law of the judiciary, and furnishes in itself a full answer to any objection that the decision of the judiciary is the law of the treaty on questions arising between the contracting parties. Neither Spain nor the United States were parties, or could have been made parties, (*se invito*) to the controversy before the courts, arising out of the seizure of the Amistad. It is a wise and sound rule of the judiciary, in ex-

pounding a treaty in a cause, and between parties properly before it, to adopt such construction, if any, as may have been given to it by the legislative and executive departments—those departments which represent the government in its relations with foreign nations—and this subordination would seem due to preserve the harmony of such relations. But it has never been considered that the converse is true; that the executive and legislative departments, in conducting the intercourse or adjusting the relations of the government with foreign States under existing treaties, acts in subordination to the decisions of the judiciary. It is no answer to Spain, therefore, to say that this subject has been determined by the judiciary of the country adversely to this claim of Spain; and it becomes necessary, in consequence, for the executive and legislative departments of the government, in replying to the demand of Spain, to construe the treaty originally, and to decide the obilgations that may arise under it. The eighth, ninth, and tenth articles of this treaty are as follow:

"ARTICLE 8. In case the subjects and inhabitants of either party, with their shipping, whether public and of war, or private and of merchants, be forced, through stress of weather, pursuit of pirates or enemies, or any other urgent necessity for seeking of shelter and harbor, to retreat and enter into any of the rivers, bays, roads, or ports, belonging to the other party, they shall be received *and treated with all humanity, and enjoy all favor, protection, and help;* and they shall be permitted to refresh and provide themselves, at reasonable rates, with victuals and all things needful for the subsistence of their persons, or reparation of their ships, and prosecution of their voyage; and *they shall noways be hindered from returning out of the said ports or roads, but may remove and depart when and whither they please, without any let or hindrance.*

"ARTICLE 9. All ships *and merchandise, of what nature soever,* which shall be *rescued out of the hands of any pirates or robbers on the high seas,* shall be brought into some port of either State, *and shall be delivered to the custody of the officers of that port, in order to be taken care of, and restored entire to the true proprietor,* as soon as due and sufficient proof shall be made concerning the property thereof.

"ARTICLE 10. When any vessel of either party shall be wrecked, foundered, or otherwise damaged, on the coasts or within the dominion of the other, their respective subjects or citizens shall receive, as well for themselves as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case; and, if the operations of repair should require that the whole or any part of the cargo be unladen, they shall pay no duties, charges, or fees on the part which they shall relade and carry away."

In view of the true intent and spirit of these articles in the treaty, construed together, it might well be taken that the case would come within the true and fair meaning of the eighth; for here it is very clear that the Spanish schooner, under the guidance of Ruiz and Montez, Spanish subjects, and under a most "urgent necessity," did

seek "shelter and [redacted]" in the courts of the United States, and within its [redacted] jurisdiction, to which [redacted] vessel and [redacted] robbers on the [redacted] should have been [redacted] livered into the [redacted] care of, and restored [redacted] sufficient proof should be made [redacted]

The [redacted] in time of [redacted] laws of [redacted] her flag [redacted] main; [redacted] which she [redacted] tive of the [redacted]

Upon the [redacted] faith and [redacted] formed in the [redacted] the forms [redacted] that would [redacted] add nothing [redacted] General of the United States in the [redacted] 1839, and [redacted] ident Van Buren, [redacted] tive document [redacted] which is the following extract:

Extract from the opinion of the Attorney General.

"In the intercourse and transactions between nations, it has been found indispensable that the faith and credit should be given in each to the official acts of the public functionaries of others. Hence the sentences of prize courts under the laws of nations, of admiralty, and exchequer, or other revenue courts under the municipal law, are thus held as conclusive as to the proprietary interest in the thing in question, but not the same be again took into in the judicial tribunals of another country. Nor is this doctrine to public proceedings. The acts of other officers of a foreign nation, in the discharge of their respective duties, are entitled to the like respect. And the point for decision is in the present case is, that whatever power or jurisdiction is delegated to any public officer or tribunal, and is exercised or confided to him or their discretion, the acts done in the exercise of that discretion, and within the authority conferred, are binding as to the subject-matter; and this is true whether the officer or tribunal be legislative, executive, judicial, or special.—Wheaton's Elements of International Law, page 121; & Peters, page 123.

"Were this otherwise, all confidence and comity would cease to exist among nations, and that code of international law which now contributes so much to the peace, prosperity, and harmony of the world would no longer regulate and control the conduct of nations. Besides, in this case, were the government of the United States to permit itself to go behind the papers of the schooner Amistad, it would place itself in the embarrassing condition of judging of and upon the Spanish laws, their force, effect, and their application to the case under consideration.

"This embarrassment and inconvenience ought not to be incurred. Nor is it believed a foreign nation would look with composure upon such a proceeding, where the interests of its own subjects or citizens were deeply concerned. In addition to this, the United States would necessarily place itself in the position of judging and deciding upon the meaning and effect of a treaty between Spain and Great Britain, to which the United States is not a party. It is true, by the treaty between Great Britain and Spain, the slave trade is prohibited to the

subjects of each ; but the parties to this treaty or agreement are the proper judges of any infraction of it, and they have created special tribunals to decide questions arising under the treaty ; nor does it belong to any other nation to adjudicate upon it, or to enforce it. As, then, this vessel cleared out from one Spanish port to another Spanish port, with papers regularly authenticated by the proper officers at Havana, evidencing that these negroes were slaves, and that the destination of the vessel was to another Spanish port, I cannot see any legal principle upon which the government of the United States would be authorized to go into an investigation for the purpose of ascertaining whether the facts stated in those papers by the Spanish officers are true or not."

With the same executive document, No. 185, are communicated copies of this vessel's papers, all of which are admitted to be regular and complete, and exemplified in proper form. Among them are manifests or passports signed by the captain general of Cuba, attesting that these negroes were slaves, and were the property of said Ruiz and Montez, respectively, with a license to transport them from Havana (the port whence the vessel sailed) to Puerto Principe, in the same island of Cuba.

The committee hold that in questions between this government and Spain, arising under the treaty, these documents are conclusive upon the United States, both as to the condition of the subject—that is to say, the slavery of the negroes—and as to the property of the claimants. On being remanded to the jurisdiction of Spain, as contemplated and provided for by the treaty, any inquiries into the validity of the evidence they imported may have been proper for her tribunals on questions either as to the slavery of the negroes or the rights of property of the claimants *inter se*.

But again: were it competent to the United States to look into evidence to contradict these documents certifying the condition of these negroes, the committee concur entirely in the opinion of the same Attorney General, that the United States could not rightfully undertake to decide questions arising under treaty stipulations made between Spain and other nations, to which this government is no party. The institution of slavery exists in the island of Cuba, a Spanish dependence, and is protected there by the laws of Spain. It appears that in the year 1819 Spain contracted by treaty with England to abolish and prohibit the African slave trade within her dominions, and it is alleged that these negroes were imported into Cuba subsequent to that treaty. If this be so, it may follow that if done with the connivance of Spain, it is in violation of that treaty ; or if by her subjects, without authority, that, by proceedings in the proper tribunals constituted by that treaty, the negroes would have been declared free, and the offenders punished ; or if either, that England would have had cause of complaint against Spain, and have been entitled to redress. But in no aspect can it be admitted that the United States could undertake to decide upon the effect and operation of treaties between foreign powers exclusively, not affecting the rights of citizens of the United States.

Upon the whole, the case, as fully shown by the documents above referred to, is nakedly this:

A Spanish vessel and cargo, owned by subjects of Spain, is found on the high seas, near the coast of the United States, in possession of lawless negroes, who had obtained such possession by murder and rapine.

Two of the passengers in the vessel, also subjects of Spain, who are

the principal owners of the cargo, and the only survivors of the white men who set out on the voyage, were found on board, held in duress and in imminent peril of their lives by the negroes; and at their urgent solicitation, for the safety of their lives and property, the vessel and cargo were seized by a public vessel of the United States and brought into a port of the United States.

The vessel was on a lawful voyage, under the flag of Spain, and with regular and complete sea-papers.

On these facts, the committee unhesitatingly pronounce that, independent of positive treaty stipulations, decent courtesy or the ordinary hospitality of civilized countries would have required, in the language of the eighth article of the treaty with Spain, that these helpless foreigners, thus cast upon our shores, should have been "treated with all humanity, and have enjoyed all favor, protection, and help." But if not so, the terms of the ninth article of the treaty are too clear to admit of doubt, and, in the opinion of the committee, the case of the Amistad and cargo comes fully within it.

It was incumbent on the United States, on the arrival of the Amistad at the port of New London, to have seen that she was "delivered to the custody of the officers of that port;" that by them she was "taken care of;" and, finally, that the vessel and cargo were "restored *entire* to the true proprietor," such being the plain language of the treaty.

That such was the obligation of the treaty, the government of the United States was fully advised by the Attorney General, in the opinion cited above; and the committee add, as appearing from the correspondence communicated with document No. 185, before referred to, that President Van Buren, in whose administration the case occurred, had caused one of our public vessels to await, off the port of New London, the decision of the district court of the United States while the case was depending, with orders, upon the release of the negroes from custody of the court, to receive them on board, and to convey them to Havana, there to be restored to the authorities of Spain.

As to the slave "Antonio," there is no justification for the failure to restore him, except that he was in some mysterious manner lost or stolen after the trial was over, and thus the government was unable to comply with its treaty obligation as to him.

In estimating the allowance that should be made for the whole claim, the committee find that the actual value of the property at Havana, when there shipped, with the reasonable expenses of said Ruiz and Montez while detained in this country in their effort to reclaim it, with interest thereon, will exceed the sum of fifty thousand dollars; and they report a bill for payment of that sum accordingly.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 36.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Ordered to be printed.

VIEWS OF THE MINORITY.

Mr. SEWARD made the following

REPORT.

The Committee on Foreign Relations, to whom was referred the resolution of the Senate instructing them to inquire into the propriety and justice of providing by law for the payment of the claims, &c., in the case of the schooner "Amistad," having had the same under consideration, and the majority of said committee having reported favorably to said claim, the minority submit the following adverse report:

The facts upon which the claim to indemnity are founded are substantially as follows:

In the year 1839 certain Cuban slave dealers imported from Africa a number of negroes, natives of that country, and on the 12th of June of that year landed them from their vessel in Havana, where they were imprisoned in the barracoon of that city, and sold as slaves. They were purchased by Don Pedro Montez and José Ruiz, subjects of the Spanish crown, with full knowledge of their character, and of the mode in which they had been brought from their native country, not one of the Africans being able to converse in the Spanish language, or to understand it.

On the 22d of June, ten days after their landing at Havana, Montez obtained a permit from the governor general of Cuba to transport *three* "ladinoes," or legal slaves, from Havana to Principe, on the south side of the island; and on the 27th of June Ruiz obtained a like permit to transport *forty-nine* "ladinoes" to the same port.

Under claim that these Africans were *legal slaves*, they were placed on board the "Amistad," a Spanish coasting vessel, owned by her captain, a Spanish subject, and resident of Cuba; and on the 27th of June, the same day on which the last permit was obtained, she cleared from Havana for Principe, having on board the captain, a boy named "Antonio," claimed by him as a slave, two sailors, Ruiz and Montez, and the fifty-two negroes.

On the 1st of July, while on the eastern coast of the island, the Afri-

cans rose and claimed their freedom. The captain and cook, attempting to restrain them, were slain, and Ruiz and Montez and the two sailors surrendered the vessel to them. They sent the sailors on shore, retained Ruiz and Montez, and directed them to steer the vessel for the African coast. In the darkness the vessel was steered northward, and on the 28th of August came to anchor off the coast of Connecticut, near the eastern shore of Long Island, and in the vicinity of New London, to which place she was taken by Lieutenant Gedney, of the ship Washington, a vessel of the United States, she having been brought to anchor there for the purpose of procuring provisions, and a part of the negroes being on shore for that purpose at the time of her capture.

2. Upon these facts judicial proceedings were instituted, to determine the question of salvage and the ownership of the negroes, claimed to be the lawful property of Montez and Ruiz.

These claimants, on the 29th of August, 1839, filed their claim in the district court of the United States, demanding these Africans as their slaves, and requiring their rendition under our treaty stipulations with Spain; and on the 19th day of September the Africans filed their answer, denying that they were, or ever had been, slaves to Montez and Ruiz, or any other person, but that they were free, and always had been.

The case was ably tried and fully argued in the district court, and decided in favor of the Africans, thus establishing their freedom.

An appeal was taken from this decision to the circuit court, in which the judgment below was affirmed.

From this judgment the case was removed to the Supreme Court of the United States, where, after due consideration and advisement, the decision was reaffirmed.

The court says: "It is plain, beyond controversy, if we examine the evidence, that the negroes never were the lawful slaves of Ruiz and Montez, or of any other Spanish subject. They were natives of Africa, and were kidnapped thence, and were unlawfully transported to Cuba, in violation of the laws and treaties of Spain and the most solemn edicts and declarations of that government. By their laws and treaties and edicts the African slave trade is utterly abolished. The *dealing* in that trade is deemed a heinous crime, and the negroes thereafter introduced into the dominions of Spain *are declared to be free.* Ruiz and Montez are proved to have made the pretended purchase of these negroes with a full knowledge of all the circumstances; and so cogent and irresistible is the evidence in this respect, that the district attorney has admitted in open court, upon the record, that these negroes were native Africans and recently imported into Cuba, as alleged in their answer."

Every facility was afforded by the President to these claimants. Learned counsel were employed on the argument, and a vessel of the United States was detailed to deliver over the negroes if the court should pronounce them slaves. They were set at liberty as freemen, by a well considered judgment of the highest legal tribunal of the country where the fact was directly in issue.—(15 Peters' U. S. Reports, p. —.)

The Spanish minister, however, at the solicitation of the claimants, brought the matter to the attention of the President of the United States, and from 1839 to this time (19 years) it has been made the subject of frequent attention in some way.

President Tyler brought it to the notice of the 27th Congress, in a special message, in 1842, and again in 1844; and President Polk, in 1847, notwithstanding the above decision, recommended to Congress to appropriate means for the payment of this claim, thus solemnly adjudged to have no validity.

The vessel was sold for salvage, and the boy, "Antonio," escaped and was never afterwards found.

Our obligations in this respect are supposed to arise out of the 8th, 9th, and 10th articles of our treaty with Spain.

"ART. 8. In case the subjects and inhabitants of either party, with their shipping, whether public and of war, or private and of merchants, be forced, through stress of weather, pursuit of pirates or enemies, or any other urgent necessity for seeking of shelter and harbor, to retreat and enter into any of the rivers, bays, roads, or ports, belonging to the other party, they shall be received *and treated with all humanity, and enjoy all favor, protection and help;* and they shall be permitted to refresh and provide themselves, at reasonable rates, with victuals and all things needful for the subsistence of their persons, or reparation of their ships, and prosecution of their voyage; and *they shall noways be hindered from returning out of the said ports or roads, but may remove and depart when and whither they please, without any let or hindrance.*

"ART. 9. All ships *and merchandise, of what nature soever,* which shall be *rescued out of the hands of any pirates or robbers on the high seas* shall be brought into some port of either State, *and shall be delivered to the custody of the officers of that port, in order to be taken care of and restored entire to the true proprietor,* as soon as due and sufficient proof shall be made concerning the property thereof.

"ART. 10. When any vessel of either party shall be wrecked, foundered, or otherwise damaged, on the coasts or within the dominion of the other, their respective subjects or citizens shall receive, as well for themselves as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case; and, if the operations of repair should require that the whole or any part of the cargo be unladen, they shall pay no duties, charges, or fees on the part which they shall relade and carry away."

The United States are in no manner compromised or obliged to satisfy this claim by these executive recommendations, made in the face of an adjudication of our highest court, and without any new facts on which to base them.

Still, the frequency and pertinacity with which this claim is urged, and especially by the present Executive in his message of December 8, 1858, who uses the following language in respect to it: "Our minister is met with the objection that Congress has never made the appropriations recommended by President Polk in December, 1847,

'to be paid to the Spanish government, for the purpose of distribution among the claimants in the Amistad case. A similar recommendation was made by my immediate predecessor, in his message of December, 1853, and entirely concurring with both in the opinion that this indemnity is justly due, under the treaty with Spain of the 27th October, 1795. I earnestly recommend such an appropriation to the favorable consideration of Congress,'" calls upon and justifies the minority of the committee in giving it a careful consideration, and they have no hesitation in recommending the rejection of the claim for the following among other reasons:

First.—Ruiz and Montez, the Cuban claimants, had no *property* in these *Africans*, and could not have held them, even by the laws of Spain, if the facts proved in the United States court had been ascertained before a Spanish tribunal, they having been kidnapped and stolen from Africa in violation of national law, by an *act of piracy*, and these claimants buying them with full knowledge, acquired no rights in them superior to those possessed by their original captors.

The crown of Spain, in 1817, in a treaty with Great Britain, agreed to abolish the slave trade and declare it piracy; by its decretal order, made soon after it declared the slave trade abolished through all her dominions, including her colonies, and asserted the *freedom of all Africans* who should be *thereafter imported* into any of her national or colonial ports, as these Africans were imported into Cuba after the passage of this ordinance, they were free by the law of Spain. Their capture was piracy; their detention in bondage by any one was illegal; these claimants, therefore, had no property in them, but were themselves violators of law, and held them in unlawful imprisonment.

If these negroes were not "property" by the laws of Spain, it is too plain for argument that their pretended owners have no just claim for *indemnity* against us. This principle was decided in the case of the "*Amedie.*"—(1 *Acton Reps.*, 240.)

Second.—Our treaty stipulations with Spain contemplate the restoration of "*lawful merchandise,*" rescued "out of the hands of *pirates or robbers on the high seas*, as soon as due and sufficient *proof shall be made concerning the property thereof.*

1. These negroes we have seen were *not* "*lawful merchandise*"

2. They were not rescued from "pirates or *robbers on the high seas.*" Indeed, it is perfectly clear that the "piracy" consisted in the unlawful detention of these *Africans* by Ruiz and Montez, and it is difficult to perceive how they could have escaped the penalty of the law if taken in the act of carrying off these negroes against their will, *after* they were landed any more than *before.*

How men stolen from their *homes*, in violation of all law and right, and rescuing themselves out of the hands of their captors, and returning to that home, can be called "pirates" is beyond comprehension!

3. There was never any "proof" offered to show these Africans the property of the claimants. In the nature of the case this could not be done. So that the case falls within no single provision of the 9th article of the treaty!

4. The vessel and owners were themselves engaged in an act of

piracy and *robbery* as much as if no landing had ever been effected in Cuba, and they had been transferred on the high seas from one vessel to the other; it was a *continuation* of the piracy, and the vessel was contraband and forfeited, with all property of her owners on board, which would have included "Antonio," if he could have been deemed a "chattle" by the laws of the United States.

5. The facts were ascertained by the court in a case in which the *claimants were parties to the record* in fact; and although the decision of the Supreme Court is no estoppel upon a co-ordinate branch of the government—the legislative—still, as its decision was just, it should be respected, and made a finality.

6. The court had power, and Congress has power, to go *behind the record*—the *permits* of the governor general of Cuba; but whether this be done or no, it is clear that the permits authorized only the transfer of *legal slaves*. These Africans were not such slaves. When that fact was proved, it became apparent that the attempt to smuggle them through under the authority of this *permit* was a gross fraud, which the papers did not and could not justify.

A pirate on the high seas may have legal papers as a *merchant vessel;* but when the fact of his actual character is proved by evidence *aliende*, the papers are no protection; they are only *prima facie* evidence, liable to be contradicted by competent proof.

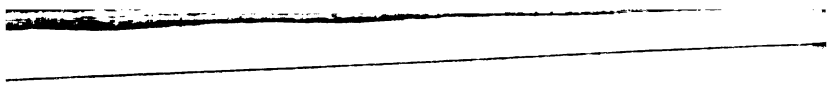
A pirate is an outlaw, and liable to be punished by any nation taking him, and no obligation exists to deliver up pirates to the government to which they purport to belong.—(Kent, vol. 1, 202.)

"The case of the "*Amedie*" was the earliest decision in the English courts on the great question touching the legality of the slave trade on general principles of international law. That was the case of an American vessel employed in carrying slaves from the coast of Africa to a Spanish colony. She was captured by an English cruiser, and the vessel and cargo were condemned to the captors in a vice admiralty court in the West Indies, and on appeal to the court of appeals in England the judgment was affirmed. Sir William Grant, who pronounced the opinion of the court, observed that the slave trade being abolished by both England and the United States, the court was authorized to assert that the trade, abstractly speaking, could not have a legitimate existence, and was *prima facie* illegal upon principles of universal law. *The claimant, to entitle him to restitution, must show affirmatively a right of property under the municipal laws of his own country; for if it be unprotected by his own municipal law, he can have no right of property in human beings carried as his slaves, for such a claim is contrary to the principles of justice and humanity.*"—(1 Kent's Com., 197.)

This claim is not supported, therefore, by the facts or the law so as to authorize Congress to make provision for its payment.

WILLIAM H. SEWARD.
SOLOMON FOOT.

FEBRUARY 2, 1858.



35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 37.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Ordered to be printed.

Mr. THOMSON, of New Jersey, made the following

REPORT.

[To accompany Bill S. 116.]

The Committee on Pensions, to whom was referred the petition of Jeremiah Pendergast, praying for an increase of pension, beg leave to report:

That it appears, from the evidence before the committee, that said petitioner was disabled while engaged in the military service of the United States, and in the line of his duty, on board the steamer Powhatan, on the 4th day of August, A. D. 1855, and that he has recently been placed on the pension roll at the rate of $4 per month, which sum is wholly inadequate to his support, on account of his total disability. Therefore, your committee recommend the passage of the accompanying bill.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 38.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Ordered to be printed.

The Committee on Pensions, to whom was referred the petition of William Allen, asking for an increase of pension, report:

That the petitioner is now a pensioner receiving five dollars per month, on account of wounds received at the mouth of the Mississippi in April, 1809, from a log of wood rolling upon him while in the service of the United States, and that, as your committee think, he is entitled to an allowance above the grade in which he is now pensioned. They therefore beg leave to report the accompanying bill for his relief.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 39.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Ordered to be printed.

Mr. YULEE made the following

REPORT.

[To accompany Bill S. 118.]

The Committee on Post Offices and Post Roads, to whom was referred the memorial of John Scott, beg leave to report:

That the memorialist seeks relief from a judgment obtained against him and his sureties for failing to carry into operation a contract for the conveyance of the mail on route No. 3503, from New Orleans to Key West.

It appears that, in 1852, an advertisement was issued, inviting proposals for conveying the mail, by sea, between New Orleans and Key West, and that the contract was awarded to the said Scott for the sum of $20,000.

The route was a new one, and never having been in operation it was difficult to estimate the worth of the service, and the sum proposed by Scott proved, by the subsequent experience of the department, to be vastly less than was necessary for the support of the route.

This fact, however, is not adverted to as a basis for the relief of the petitioner, but as explanatory, in part, of the difficulty he experienced in organizing the means to carry his contract into effect as promptly as might otherwise have been practicable. Immediately upon being informed that the contract was awarded to him, the petitioner proceeded diligently to prepare for its execution, and, in his efforts to obtain steamships suitable for the purpose, he visited New Orleans, and all the principal northern cities as far as Portland. Finding it impossible to obtain suitable steamers at any reasonable price, and the limited interval for commencing service not affording time to build them, he applied for and obtained an extension of time until the 1st of March. He alleges further, that having been unfortunately taken sick at Washington, he was unable to continue his efforts, and did not succeed in effecting an arrangement for a suitable steamer until the middle of March, when he arranged with Captain Montgomery, who had a new steamer nearly completed at Baltimore, and informed the department of the arrangement, and that the service would be commenced in five weeks.

Before the expiration of that time, the department gave the contract to Samuel S. Green, for $26,000 per annum, and instituted a suit against the petitioner for damages, which suit resulted in the judgment from which he seeks relief.

The contract was made December 9, 1852, and required the commencement of service on the 15th of January following, an interval of only five weeks. The petitioner appears to have employed that very brief time diligently in the endeavor to obtain a suitable steamer, and having failed, obtained an extension of six weeks more; but, in the meanwhile, being prostrated by sickness, he was disabled from pursuing his object, and did not effect an arrangement until a few days after the expiration of the time.

Upon an investigation of the history of the service since that time, it appears that no real damage was caused to the government, for the price at which the contract was awarded would have been totally insufficient to sustain the service.

It seems that the contract was transferred, first, to James C. Green, for $26,000 per annum, who, after performing the service very irregularly for a few months, failed, and it was relet to W. C. Templeton for $42,000, who also performed the service very irregularly; that it was afterwards let to E. G. Rogers & Co. for $41,800, who also failed, and the contract was successively refused by two parties at $48,000; that it was then let to J. M. Howell & Co. for $70,000, who likewise failed to put the service in operation; afterwards to John B. Camden at same rate, who failed; and, finally, to the present contractors for $70,000, and no damages have been sought against either of these other parties. Taking into view that the route was a new one, and that it was therefore difficult to estimate the proper value of the service; that the petitioner proceeded in perfect good faith, and with great activity and devotion, and at a good deal of personal expense, to give effect to his engagement; and that his failure to commence the service within the brief time allotted was owing to a providential visitation, which prostrated him with sickness in the midst of his efforts; and that he had, in fact, notified the department of his having made suitable arrangements before the contract was transferred to Green; and considering, further, that the experience of the service has demonstrated that it was not possible to be performed for any sum approaching that at which the contract was awarded; and that no damages have been sought against any of the subsequent failing contractors, the committee have deemed it a suitable case for the application of a just public clemency, and accordingly recommend a remission of the penalty recovered against the petitioner.

A bill to that effect is herewith reported, and its passage recommended by the committee.

POST OFFICE DEPARTMENT, CONTRACT OFFICE,
January 22, 1858.

SIR: In answer to yours of the 19th instant, I have to state that, on the failure of John Scott to put the service in operation on route

No. 3503, from New Orleans, Louisiana, to Key West, Florida, the department, on the 4th of April, 1853, ordered a contract with Samuel S. Green, of New Orleans, the next lowest bidder, at $26,000 per annum. He commenced the service on the 21st April, 1853, but ceased in February, 1854, his boat getting aground at St. Marks and being sold as unseaworthy. After an ineffectual effort by the department to induce him to resume, the route was advertised and let to W. C. Templeton, of New Orleans, the only bidder, at $42,000 per annum, from 1st October, 1854, to 30th June, 1855. He performed service till the close of this term. For the succeeding four years term, the route (under the number 6852) was regularly advertised with the other Florida routes, and at the lettings, E. G. & L. F. Rogers, of New Orleans, were the accepted bidders at $41,800 per annum. They put the service in operation accordingly, and continued it till September, 1856, when they failed. The next lowest bids were those of Brooks & Barden, at $48,000, and Walter L. Cozzens, at $48,000. Upon the failure of Messrs. Rogers, the contract was offered, successively, to both these parties and declined by them. The only other bid for the advertised service was at $70,000 per annum. On the 23d January, 1857, a contract was ordered with J. M. Howell & Co., at $70,000. Howell & Co. failing, up to the 14th of March, 1857, to commence the service, the order to contract with them was at that date rescinded, and a contract was ordered with John B. Camden, at the same rate. He failed, however, to comply with the conditions of the order, and the department proceeded to contract with the Southern Steamship Co., E. J. Hart, of New Orleans, president, on the same terms. They commenced service on the 12th May, 1857, and have continued to the present time.

Very respectfully, your obedient servant,

WM. H. DUNDAS,
Second Assistant Postmaster General.

Hon. D. L. YULEE,
Senate United States.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 40.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Ordered to be printed.

Mr. THOMSON, of New Jersey, submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Isaac Blauvelt, for the pension to which his father as a revolutionary soldier would have been entitled, report:

That the petitioner alleges, without evidence, that his father was a revolutionary soldier, and he therefore asks to be allowed such pension as would have accrued to his father at the time of his death in 1843. By a decision of the Attorney General, under which, as your committee is advised by the Commissioner of Pensions that office is now acting, even was the proof of the service of the father complete, this petition could not be allowed. Your committee therefore report adverse to the prayer of the petitioner.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 41.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Ordered to be printed.

Mr. THOMSON, of New Jersey, submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Albert G. Hopper et al., heirs-at-law of Garnett A. Hopper, deceased, report:

That this petition is to be allowed a pension for the revolutionary services of the father of petitioner. "By a recent decision of the Attorney General," however, it appears that "children of revolutionary soldiers cannot legally establish and recover claims of this character," and your committee therefore report adverse to the prayer as made.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 42.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Ordered to be printed.

Mr. FOSTER submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of John Wentworth, praying that his present pension may be made to commence from the date of his discharge from the service, report:

It appears that the petitioner served in the navy of the United States during the last war with Great Britain; that he was a seaman on board the frigate Constitution at the time of the capture of the Guerriere and Java; that he was wounded in the battle with the latter frigate; that on the 18th of May, 1848, he was granted a pension of $36 per annum for his disability, and on the 23d day of September, 1851, his pension was increased to $54 per annum, on account of the increase of his disability.

The prayer of the petition is, that the payment of the pension may be made to commence from the 2d of April, 1813, the date of his discharge from the service.

The present law of the United States, and the practice of the department, are to allow the payment of pensions to commence from the time of completing the testimony. Granting the prayer of this petition will be a departure from the existing law, and until Congress is prepared to repeal it your committee are of opinion that it should be enforced. They therefore recommend that the prayer of the petition be denied.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 43.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Ordered to be printed.

Mr. JONES submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Elijah Roath, asking for a pension, report:

That the said Roath alleges that he was a soldier in the war of 1812, and that whilst engaged in active service became injured in the left side, which rendered him unfit for duty, and for a considerable time unable to perform labor. His statements, however, are entirely unsupported by concurring testimony, and therefore your committee recommend that the prayer of the petitioner be not granted.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 44.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Ordered to be printed.

Mr. YULEE submitted the following

REPORT.

The Committee on Post Offices and Post Roads, to whom was referred the petition of William Moss, praying additional compensation for carrying the mail on route No. 7600, from Washington, in Arkansas, to Clarksville, in Texas, report:

The petitioner alleges that in the general mail lettings in the year 1854, he bid for and became the contractor on route No. 7600, from Washington, in Arkansas, to Clarksville, in Texas, which service was to be performed with two-horse coaches, at the yearly compensation of $6,500; that said service was thus performed up to about the 1st of January, 1856, when he found, on account of the unsettled condition of the roads and the increase of mail, that it was impossible to perform the service with two-horses, in accordance with the original contract, and that he must either abandon the same or increase his team; the latter he preferred to do, in the hope that he would receive extra compensation therefor, and has since run three horses instead of two.

It appears that application was made by the contractor to the Postmaster General to increase the service to three trips weekly, and also to change the mode of service to four-horse coaches. Both of these, as appears by the letter of the Postmaster General, were refused.

The committee do not deem it advisable to interfere in the case. The Postmaster General is entrusted with a discretion as to the frequency and mode of service required for regularity and security of the mails and the accommodation of the public. The petitioner having contracted to convey the mails over the specified route in two-horse coaches, was only bound to take what two horses were capable of conveying. If it had been made to appear to the Postmaster General that the weight of mail matter was more than could be transported in the mode of conveyance agreed in the contract, undoubtedly he would, as would have been his duty, have provided improved means of conveyance. At all events, it is not deemed advisable to encourage appeals from the Post Office Department to Congress, in matters of current administrative detail, in reference to which the law confides a discretion in the Postmaster General. If the mails were too heavy to be carried by a two-horse coach, and the Postmaster General refused

to increase the service, the course for the contractor was simply to comply with his contract by carrying as much as a two-horse coach would convey, and not to undertake, in defiance of the department, to change the mode of service.

The committee do not regard this to be a proper case for relief, and therefore recommend the following resolution:

Resolved, That the prayer of William Moss ought not to be granted.

POST OFFICE DEPARTMENT, *January* 26, 1858.

SIR: In answer to the petition of Mr. Wm. Moss, referred by you to this department, I have the honor to state that the application for three additional weekly trips on route No. 7600, from Washington, Arkansas, to Clarksville, Texas, at $6,300 additional per annum, (pro rata,) was not granted by the Postmaster General; and there is no power under the law to change the mode of service from two-horse coaches to four-horse coaches without readvertising the route, which my predecessor did not consider necessary in the case of Mr. Moss. This is the only mode known to the law by which additional compensation can be allowed for a higher grade of service.

It is true, as set forth in the petition, that route No. 7681, from Shreveport, Louisiana, to Washington, Arkansas, was put into operation July 1, 1855, and the mails required to be conveyed in two-horse coaches, three times a week; and route No. 7699, Gaster's Landing to Washington, three times a week, in two-horse coaches, was put into operation July 1, 1856, and improved to six times a week from August 17, 1857; and the service on route No. 7503, from Little Rock to Washington, three times a week, in two-horse coaches, was put into operation on July 1, 1854, and improved to six times a week from April 14, 1857.

The service under these contracts expires on July 1, 1858. The petition is herewith returned. Hoping that the above statement of facts may be satisfactory to the committee, I remain, very respectfully, your obedient servant,

AARON V. BROWN.

Hon. D. L. YULEE,
Chairman Committee Post Offices and Post Roads,
Senate United States.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 45.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Ordered to be printed.

Mr. YULEE submitted the following

REPORT.

The Committee on Post Offices and Post Roads, to whom was referred the petition of the legal representative of George Mayo, deceased, praying compensation for services performed by said Mayo as an extra clerk in the General Post Office Department, beg leave to report:

The petitioner alleges that about the 1st of September, 1831, George Mayo, at the suggestion of his brother, the petitioner, who was at that time a clerk in the Post Office Department, went to work to assist him upon the duties of his desk, the said George Mayo being at that time an applicant for a clerkship in that department. He was thus employed for one month, when, it is alleged, he was transferred by one of the Assistant Postmasters General to other duty, which he performed until the 1st of March following, when he voluntarily left the department. At a subsequent period he received an appointment in the department, which he had during all this time been expecting, at a salary of eight hundred dollars per annum, but did not hold the same only about a year before he was taken sick and died.

No evidence appears that he preferred a claim against the department during his life for the services rendered prior to his appointment.

The first claim that appears to have been made was by the petitioner, in the year 1843, about eleven years after the service was performed; which claim, upon being presented to the then Postmaster General, Mr. Wickliffe, was rejected, upon the ground that the records furnished no evidence of an agreement to pay, and that, in the opinion of Mr. Wickliffe, as the said Mayo remained without being paid, or claiming pay, though the clerks, regular and extra, were paid off at the end of each month, he occupied a position in the office often sought by young men, to do duty without charge, in order to be in a favorable position for the first vacancy, which opinion was subsequently concurred in by Postmaster General Johnson, in 1846.

It does not therefore appear that the employment of the said George Mayo in the department prior to his appointment was authorized by the Postmaster General, the only officer competent under the law to employ extra clerks in his department; and this fact, taken in con-

nexion with the fact that no demand was made upon the department during the said Mayo's life, and not until nearly eleven years afterwards, justifies the inference that the department entertained the proper view of the case, and in which view your committee are inclined to concur.

They feel that the equity of the case is not sufficiently strong to justify them in recommending the payment of the compensation prayed for, establishing thereby a precedent which might lead to much laxity and abuse. They think it best to adhere strictly to the rule that no clerks or officers shall be added to the public service by the executive departments beyond what is authorized by law and provided for by appropriation, and therefore they recommend the adoption of the accompanying resolution:

Resolved, That the prayer of the representative of George Mayo, deceased, ought not to be granted.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 46.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1858.—Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of John Hughes, praying to be allowed a pension on account of injuries received while serving in a privateer during the war of 1812, *have had the same under consideration, and report:*

The application of the petitioner having been submitted to the Navy Department for information as to the facts therein stated, the following letter was received by the committee:

NAVY DEPARTMENT,
January 21, 1858.

SIR: I have the honor to return herewith the petition and papers of John Hughes, which accompanied your letter of the 20th instant, and to state, that after a thorough examination of Commodore Porter's correspondence, nothing can be found to show that Hughes was wounded in the service. His name appears upon the rolls of the Essex at the time stated by him.

I am, very respectfully, your obedient servant,

ISAAC TOUCEY.

Hon. S. R. MALLORY,
Chairman Committee Naval Affairs, United States Senate.

The only proof which the petitioner submits of his having been wounded while serving in the Essex is his own affidavit, which is not sustained by the correspondence of Captain Porter on the files of the Navy Department.

"The only provision made by Congress for invalids disabled on board of private armed vessels, during the war of 1812, is an appropriation for the payment of the pensions of those now on the list. There is no law now in force under which original claims of this class can be allowed."—(Letter Com'r. Pensions to Senate Pension Committee, June 16, 1856.)

Your committee are of opinion that the prayer of the petitioner ought not to be granted, and they ask to be discharged from its further consideration.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 47.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1858.—Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of John Pope, a captain in the navy, praying to be allowed the difference between the pay he received, and that Commodore Abbott would have received had he not died, for the time he discharged the duties of commander of the squadron, have had the same under consideration, and report:

The petitioner's claim to extra compensation having been submitted to the Navy Department for the facts involved therein, the following explanatory letter was received by the committee:

NAVY DEPARTMENT,
January 21, 1858.

SIR: I have the honor to acknowledge the receipt of yours of the 20th instant, enclosing the petition of Captain John Pope, praying extra compensation, and requesting such information, &c., as may be deemed proper.

The death of Commodore Joel Abbott, commanding the East India squadron, on the 14th of December, 1855, made Captain Pope the senior officer on that station until the date of the sailing of the Macedonian (which vessel he commanded) on the 2d of February, 1856, for the United States. In the meantime, Commodore James Armstrong, who had been ordered to relieve Commodore Abbott, left New York on the 25th of October, 1855, in the steam frigate San Jacinto, for the East Indies.

Captain Pope never received any order from the department to hoist a broad pennant, nor was he recognized by it as commanding a squadron.

It should be stated that Captain Pope was at that time, and is now, a captain, promoted under the act of February 28, 1855, to fill a vacancy created by the reserved list. Captain Pope, on the 28th of

Mississippi, it was only his second cruise, and, by the regulations of the department, if she had been rated as a frigate, he would not have been entitled to have been ordered to her."

Subsequently, under a similar reference from the department, and relative to the duties of Mr. Kennon as purser of the Mississippi, during the "Mexican war," the Fourth Auditor replies:

"I respectfully state that there is no evidence on the files of this office to show that the duties of Purser Kennon, during the year and a half that he was on board the steam frigate Mississippi, were more varied or onerous than might reasonably be expected to devolve on the purser of the flag ship of a squadron in time of war. Doubtless, many transfers were made of stores and money to other vessels, but when such transfers were made, Mr. Kennon had only to take receipts from the disbursing officers of those vessels, upon the production of which he would receive credit for the amount. He did not act as purser of any vessel except his own. I know of no peculiarity in his situation, nor any cause arising out of the regulations or instructions to which he was subjected, that would have prevented him, with the exercise of due diligence, from keeping and rendering accurate accounts of his disbursements."

To the allegation of the memorialist, unaccompanied by other evidence, that "by order of the commander-in-chief" he "was obliged to act as disbursing officer, not only of that ship, but of five small schooners and steamers, and of two shore stations—the hospital on the Island of Salmadina, and the naval station established at Vera Cruz"—the Fourth Auditor replies: "He did not act as purser of any vessel except his own."

Your committe, concurring in the opinion of the Fourth Auditor in the reports hereinbefore recited, and under the fact as stated by the Secretary of the Navy, that "by the regulations of the department, if she (the Mississippi) had been rated as a frigate, he (Mr. Kennon) would not have been entitled to have been ordered to her"—report that, in their judgment, the memorialist has no just claim for the additional compensation prayed, he having received the full pay to which he was entitled by his position on the register and the rate of the vessel to which he was attached; and that his pay was equal to the amount received by his immediate predecessor and successor, during the period in which the Mississippi was rated as a "steamer of the first class." Your committee therefore ask to be discharged from the further consideration of the subject.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 49.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1858.—Ordered to be printed.

MR. MALLORY made the following

REPORT.

[To accompany Bill S. 120]

The Committee on Claims, to whom was referred the case of David Myerle, reported from the Court of Claims, unanimously report:

The claim was first presented to the Senate by the memorial of the claimant at the 1st session of the 28th Congress, and has been continuously prosecuted to this time.

The nature of the claim is shown by the evidence taken before the Court of Claims, and which is briefly recited in the decision of the court as showing the nature of the arrangement made by Mr. Paulding, in 1839, as Secretary of the Navy.

Mr. Paulding states, that while he was at the head of the Navy Department the claimant called on him with reference to certain improvements he had made in the machinery for manufacturing cordage; that, perceiving the claimant to be an intelligent and enterprising man, he suggested to him that it might be advantageous to him to engage in the business of water-rotting hemp, and that the claimant stated, that although he did not believe the occupation to be dangerous to those engaged in it, yet, being then engaged in a profitable business, he was unwilling to relinquish it for one which he foresaw would be attended with almost insurmountable obstacles, and a failure in which would involve him in great pecuniary loss. *The Secretary then assured the claimant that the department would take care that he should be recompensed for any loss he might ultimately sustain in consequence of a failure of the experiment; and he states that he made* this promise solely in the hope of being instrumental in conferring a great benefit on his country, and under a full conviction that if he remained in office he would redeem his pledge, without transcending his powers or violating any existing law. He says further, that the claimant, being influenced, as he believes, by these assurances, as well as by motives of patriotism, acceded to his proposition, and a contract was entered into with him for two hundred tons of American water-rotted hemp; that the claimant made no ap-

plication for a contract; that the proposal came from the Secretary; that no advertisements for proposals were issued, nor was any security demanded for the fulfilment of the contract, as the whole affair was considered as an experiment, made with a view to settle a question of great national importance. Mr. Paulding says, also, that his object was to remove the prejudice against the process of water-rotting, and demonstrate the practicability of producing a domestic article equal to the first quality of Russian hemp.

The claim is based upon the grounds, 1st. That the hemp delivered by him at Boston, under the contracts, was improperly rejected, whereby the enterprise, which promised remuneration, was converted into the means of his ruin; and 2d. Upon the promise of indemnity against loss made by the Secretary of the Navy.

Upon both of these grounds the Court of Claims decided against the claimant, holding that there was no legal liability which could be enforced in that Court against the government, as the act of 3d March, 1809, provides that "all purchases and contracts for supplies or services which are or may, according to law, be made by or under the direction of either the Secretary of the Treasury, the Secretary of War, or the Secretary of the Navy, shall be made either by open purchase or by previously advertising for proposals respecting the same."

The Court while, however, deciding against the legal liability of the government, thought, from the peculiar circumstances of the case, that they should lay the facts before Congress, with the remark that "the evidence tends to show that an active and enterprising man of business became embarrassed in his circumstances, and was deprived of the just and fair profits of an honest occupation by his efforts to promote a matter of national concern," and they therefore submit "the whole matter to the consideration of Congress for such action as they, under all the circumstances, shall consider just and equitable."

The committee are of opinion that it is both just and equitable, under the circumstances of the case, that the applicant should receive compensation.

In reference to the contract for and the delivery of hemp, Mr. Paulding states, in his letter of 4th January, 1853:

"In all the testimonials I have given in behalf of your claim, I was governed by no papers or representations of yours. I stated facts, and only such facts as were known to myself, and many of them notorious to the public. I stated, in the first place, that it had long been the wish of the government to procure a supply of American water-rotted hemp for the consumption of the navy, in order that the country might be independent of foreign nations, especially in time of war; but that all efforts had been unsuccessful, principally on the score of its being universally considered in the West an unhealthy occupation, fatal to the slaves who would be principally employed in the business.

"I stated that, in consequence of my solicitations and encouragement, you were unwillingly induced to undertake this most important business, and that, accordingly, a contract was entered into for the supply of several hundred tons of American water-rotted hemp.

"I stated that, after surmounting great obstacles, you at length succeeded so far as to deliver a large supply of American water-rotted

hemp at the Boston navy yard, which, being tested with the best Russia, proved considerably stronger, but was rejected by the inspectors on the frivolous pretext that it was not quite so clean; and I now state, that the late Commodore Nicholson, who afterwards commanded at Boston, has since assured me that corrupt means were used to induce the inspectors to come to that decision.

"I further stated, what was already sufficiently notorious, that in consequence of your success in the production of water-rotted hemp, and the proof thus afforded that it was not an unhealthy occupation, others had entered upon it, insomuch that the naval and commercial marine of the United States are in a great measure supplied with American water-rotted hemp, and no longer dependent on foreign nations for an article so indispensable.

"All this I stated from my own knowledge, and not from your papers and representations; and consequently, thus far, there was no deception on your part.

"With regard to your pecuniary circumstances at that time, I said nothing, because I knew nothing, and did not think it had the slightest connexion with the justice of your claim. I had a great national purpose in view, and I found in you a man ready to undertake its accomplishment; if you succeeded, the country would be greatly benefitted; if you failed, it would be just where it was before. No advances of money were required, and no injury to the public interest could occur from your failure, as the department had then on hand a supply of Russian hemp for two years, if I recollect aright; at any rate, for a very considerable period.

"There was no deception here. Whether solvent or not solvent at the time you entered on the contract are of no consequence to me or the country, provided you succeeded in your undertaking; and with unfeigned respect for Congress, I do not perceive how the decision of this question can affect the justice of your claim in the slightest degree, that is a private affair between you and your creditors.

"The facts I have stated, and which are notoriously true, sufficiently prove that you were the principal instrument in conferring a great benefit on your country; whether rich or poor when you began is of little consequence to any one but yourself. It is sufficient to know that you are now poor, and that this poverty is clearly owing to the improper rejection of your hemp at Boston, which effectually arrested all future efforts, and was sufficient to ruin your affairs. Nothing is more common for men to commence business, or enter on great undertakings, on borrowed capital, and to take the risk of success or failure Nor, however I may disapprove of such a course, do I think justice should be denied them, because, perhaps, the loss may fall on others. If any other person or persons have a legal claim in any portion of the anticipated bounty of Congress, it seems to me it should be decided by a court of judicature, not by Congress.

"I do not know whether you lost any money by your contract, or whether you had any to loose; but this I know, that you spent years of your life, and encountered a series of labors, obstacles, and discouragement, in prosecuting your undertaking, which deserve some remuneration, and that for the last seven or eight years you have

been condemned to a purgatory of cares, anxieties, losses, and disappointments, which I would not have endured for ten times the sum you may receive from the justice or the bounty of Congress."

The damage claimed by Myerle for the rejection of his hemp, as shown by the statement in the report from the Court, page 44, is $65,000, being the difference between $150,000, the contract price for 500 tons, and the cost delivered at Boston of $85,000.

There is a good deal of other evidence in the record, as to whether the hemp was or was not properly rejected; but in the view taken of the case by the Court, in which the committee concurs, it is not necessary to go into the details, and it is only here referred to as one of the items which enter into consideration in the judgment to which the committee have arrived.

It is shown also by the evidence that the rejection of this hemp not only deprived the claimant of the profit which had been anticipated by the contract, but produced overwhelming embarrassment in his pecuniary affairs. At the time he undertook this experiment he appears to have been a man of means, extensively and prosperously engaged in the rope business. His devotion and zeal in the prosecution of the business of water-rotting hemp, under the engagement with the Secretary of the Navy, together with the rejection of his hemp, reduced him to poverty.

In a letter from Secretary Badger, dated Navy Department, May 10, 1841, addressed to Mr. Myerle, he says: "The patriotic spirit which prompted you to the great undertaking in which you are now employed, and the perseverance with which you have prosecuted it, deserve and have the commendation of the department."

The committee find that this experiment was not only prosecuted with great zeal and perseverance, but that it was also conducted to a successful result, promotive of great advantage to the best interests of the country.

On this point there is abundance of proof, but it is not deemed essential to do more than to extract the following:

Willis Stuart, of Louisville, Kentucky, says, in his letter dated November 10, 1845: "I hope that Congress will yet do you justice, as you have certainly lost the last six or seven years in endeavoring to confer a great benefit on your country, and in which you have certainly succeeded. It is said that republics are ungrateful, and they doubtless are so in many instances; yet a distinguished statesman of our day has said: 'Truth was omnipotent and public justice certain;' and I hope that you will yet be amply rewarded for all your toils and sacrifices."

In the letter of Mr. Buchanan, dated Wheatland, September 2, 1850, he says: "When you undertook the task of instructing the hemp growers of the west the art of water-rotting hemp in such a manner as to render it an healthy employment, and had entered into a contract with the Secretary of the Navy to furnish the department with a quantity of the article, I felt a lively interest in your success. This induced me to watch your progress with much solicitude. I had many conversations with you on the subject. *The result of your labors has been a great benefit to the country. We now have an ample supply*

of an article necessary for self-defence, whilst its cultivation has been and will continue to be a source of profit to many of our agriculturists."

Again, in a letter from the same gentleman, dated London, December 14, 1855, he writes: "I am truly sorry my recollection does not serve me in this particular, because I espoused your cause *from a sincere conviction that it was just.*"

In the report of Secretary Mason, dated December 4, 1848, it is stated: "The supply of hemp on hand, and deliverable under contracts already existing, render it unnecessary to advertise for any additional quantity for the present year. *That American hemp can be prepared in quality equal to any in the world has been established by experiments under the most rigid tests.*"

These extracts, together with the statement of Mr. Paulding, heretofore quoted, are sufficient to show that the country has gained great advantage from the services of Mr. Myerle, and, as these were performed under an agreement, made *bona fide* with the Secretary of the Navy, it is but just, in the opinion of the committee, that some compensation should be made therefor, though it may be admitted that the law did not authorize the Secretary to bind the government by such an agreement.

The committee has traced the history of this claim in the two Houses of Congress since its first presentation, and find that during the 29th, 30th, 32d, and 33d Congresses, six times have bills been reported in favor of the applicant in the Senate, and, during the same period, seven times in the House of Representatives. That, in the 30th and 33d Congress, the bills passed the Senate, and that, in the 29th, 30th, and 32d Congresses the bills passed the House three several times.

The committee has looked to these bills as some evidence of the opinion of Congress as to the amount which should be allowed the claimant. The sum stated in the bills which passed the Senate in the 33d Congress, and the House the 2d session of 32d Congress, is $30,000, with interest from 1st January, 1850. The committee does not regard this as equivalent to the damages claimed by Myerle, but as those damages do not arise under any binding contract with the government, they adopt the amount which those bills would give, as the nearest approximation to an equitable allowance as the evidence of the case would seem to authorize.

The committee report a bill and recommend its passage.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 50.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1858.—Ordered to be printed.

Mr. SIMMONS made the following

REPORT.

[To accompany Bill S. C. C. 121.]

The Committee on Claims to whom was referred the report of the Court of Claims in the case of Sturgess, Bennett & Co., report:

That between the years 1847 and 1851 the claimants imported a quantity of brandy and whiskey in casks. The quantity expressed in the invoices exceeded that which was found to be contained in the casks, by the gauger's return. Duties were levied and paid upon the value which appeared by the invoices to have been paid for the quantity of liquor put into the casks at the place where it was purchased or shipped.

The number of casks of liquor imported was 3,123, the rate of duty one hundred per cent. The deficiency between the quantity purchased and the return of the gauger here cost $2,068, and this sum they claim should be repaid as overpaid duties.

Allowance appears to have been made on 373 casks of the liquor when it was imported, amounting to $219. For what cause or reason this allowance was made does not appear.

The committee do not deem it necessary to be more exact in the statement of the particulars, nor do they propose to examine the decisions and authorities referred to and relied upon to support the claim, and set out in the petition of the claimants, and in the brief of their counsel, or those embraced in the opinions delivered in favor of and against the claim by the members of the Court of Claims.

These relate chiefly to the question of the necessity of protest, and it is sufficient to say that the committee would not refuse to recommend relief where there was, in their judgment, a just claim upon the government, because no protest was made at the time the duties were paid; for we hold that this government is able, and should be willing, to pay all just claims upon it, and should not be deterred from examining and recommending the payment of what we believed justly due by their number or magnitude.

On the other hand, the committee would not recommend any new act of legislation to pay what they believed to be unjust claims, in consequence of, or in deference to, any opinions which they deemed unsound, although the opinions might have been given by a coördinate department of this government.

The claim before us presents two questions for examination:

First. Were the liquors upon which the duties were paid actually imported? and,

Second. Was more money paid to the government by the claimants than the law (existing at the time) required them to pay, upon entering the goods for consumption?

Upon the first question there is a difference in the statements of the parties. The claimants aver that they paid duties upon the entire quantity stated in the invoices.

The solicitor for the government says that from the time the act of July, 1846, took effect, down to July, 1851, the Secretary of the Treasury instructed the collectors of the customs to make allowances, and that they did make an allowance of two per cent. upon all liquors imported during that time, as an allowance for "*leakage*," under the act of March 2, 1799.

The Court of Claims do not (upon the evidence) decide which of the two statements is correct. The committee have no other evidence before them, and will, therefore, state what they believe would be the effect in each of the cases stated.

It is admitted that the deficiency in the quantity was not caused by "stress of weather or accident," but was the ordinary waste incident to the voyage, and to the lapse of time between the gauging at the place of purchase and the gauging in this country to determine the quantity then in the casks.

It is obvious that if the allowance of two per cent. was made, as is said, under the instructions of the Secretary of the Treasury, such allowance would have been conclusive, (if the amount of the duties still depended, as in former laws, upon the *quantity* of this description of liquors imported;) and whether the waste was actually more or less than the two per cent. would be immaterial,

The section of the act referred to is as follows:

ACT OF MARCH 2, 1799.

"AN ACT to regulate the collection of duties on imports and tonnage."

SECTION 59. "That there be an allowance of two per cent. for leakage on the quantity which shall appear by the gauge to be contained in any cask of liquors subject to duty by the gallon; and ten per cent. on all beer, ale, and porter, in bottles; and five per cent. on all other liquors in bottles; to be deducted from the invoice quantity, in lieu of breakage; or it shall be lawful to compute the duties on the actual quantity, to be ascertained by tale, at the option of the importer, to be made at the time of entry."

This section requires the capacity of the cask to be ascertained by the gauger, and from this quantity, thus shown to be its contents, was to be deducted the two per cent. for the loss by leakage.

To construe this provision, as must be done to create a claim for a return of overpaid duties, if the deficiency exceded two per cent., the provisions for gauging the cask must be construed to mean that the gauger was to measure the liquor therein, and then deduct the two per cent. from what was actually found to be in the cask, instead of an allowance for what had leaked out of it, as is expressly declared to be its intent, and thus make the entire provision an absurdity.

Having considered what would be the result if the facts are correctly given by the solicitor for the government, we will examine the

claim upon the theory of the claimants, supposing the facts to be as set out by them.

They say that duties were paid on the entire quantity expressed in the invoices, and that the gauger's return showed a less quantity, and that they have been thus obliged to pay upon what was not imported by them, and claim for the amount thus overpaid.

It appears from what has been stated, that the deficiency upon which they claim is about a gallon in each cask imported, and they rely solely upon this circumstance to show that they have paid duties on liquor which was not imported. They should certainly establish the fact of overpaid duties upon their own theory of their claims, before they can expect Congress to pass a special act for their relief.

The greater part of these importations were warehoused, and the duties paid when the liquor was taken out for consumption. The claimants do not show at what periods the casks were gauged in the two countries.

It must be plain to any one of common observation that if a cask was purchased in France and a hundred gallons of brandy put into it, that after it had remained six months or a year, there could not be as much drawn out of it. If the cask was brought to this country and measured here, the fact that there was a gallon less than was first put in would not prove that the liquor had leaked out and was not imported, because it is manifest that the wood of which the cask was made would absorb more than the quantity claimed in this case not to have been imported. There are other causes—such as the temperature and other conditions of the atmosphere at the times when the gauging is performed—which are said to cause far greater variations in the apparent quantity than was shown in the cases we are considering. The liquor, therefore, might all come here, and the most that can be made of the facts stated and relied upon as the basis of this claim is, that it could not quite all be drawn out of the casks to be sold, although it was all put in them and remained in them when they were imported.

The second, and main question is: was more money paid than the law required the claimants to pay to the government when the goods were entered for consumption? This is not embarrassed by any disagreement about the facts between the parties, and rests entirely upon the construction of the law.

The law required the duties to be assessed upon the true value of the liquors at the port of entry; but the Secretary of the Treasury instructed the collectors to value at the place of exportation or shipment, or to commence with the cost at the place of production, and make certain specified additions to that cost, for various expenses prescribed in the instructions of the Secretary of the Treasury, until the goods were on shipboard, when all further expenses were directed not to be added.

In all the instances of importation under review it was upon the *value so made up* that the duties were levied and paid. No complaint was then made, or is *now made*, that the *value* was *too high* or *too low*, by either party. It was upon *this value* alone that any duties were payable under these instructions, and there was neither necessity nor reason for any gauging or measuring at all, except so far as it might

aid in determining the value, or in preventing under valuation; for the law declared that "under no circumstances shall the duty be assessed upon an amount less than the invoice value, any law of Congress to the contrary notwithstanding."

This, it seems to us, disposes of all the grounds upon which the claimants have placed their claim for a return of overpaid duties; and shows clearly that there is no reason for *special legislation for their relief;* and with such a declaration we would conclude this report, but for the facts disclosed by this investigation, which appear to require some notice, as showing the very great losses to which the revenue is exposed by the various decisions referred to in the papers before us, and the great expense incurred in the investigation of the claims these decisions have created.

The first instructions issued by the Secretary of the Treasury to the collectors of the customs for the execution of the law of the 30th July, 1846, and the judicial decisions upon questions arising under the provisions of this law, are of so marked a character and disclose so clearly the source and nature of some of the difficulties now experienced, that with all proper respect for the high character of those through whose instrumentality these difficulties have been occasioned, we deem it proper to call the attention of the Senate to the character and extent of them.

We may here say, that the mode of levying the duties, (upon the kinds of merchandise under examination,) was by the tariff of 1846 altered from what was called specific duties to certain rates per cent., to be levied upon the dutiable value of the importations. This *change* from the forms to which we had become accustomed by long experience we, regard as the cause of our present difficulties respecting imports of this description; while the instructions and the opinions and decisions before referred to have occasioned difficulties not only in reference to this class of imports, but seriously affecting the revenue derived from all other imported merchandise subject to duty, greatly to the injury of the government, by lessening its receipts and increasing its expenditures.

The reasons for and against this change in the mode of assessing duties need not now be examined further than to say, that those who preferred the old mode, and the advocates of the new, aimed at levying the duties upon the value of the goods at the place of importation, and not at the place from whence they were imported. One imposed a fixed sum, predicated upon their experience of what that value had been, and the other fixed upon a rate upon what should be ascertained in each case to be the value at the place of importation, as in the act of 1846, and a resort to the value in the foreign market, or place of production, was taken as the commencement of a process by which, when carried through, the *value* at the port of entry could be determined. To show that this view of the law of 1846 is the only correct one, we submit the following extracts therefrom:

TARIFF OF 1846.

Statutes at Large, vol. 9, page 43:

"SEC. 8. And be it further enacted, that, it shall be lawful for the owner, consignee or agent of imports which have been actually pur-

chased, on entry of the same, to make such addition in the entry to the cost or value given in the invoice as, in his opinion, may raise the same to the true market value of such imports in the principal markets of the country whence the importations shall have been made, or in which the goods imported shall have been originally manufactured or produced, as the case may be; and to add thereto all costs and charges which, under existing laws, would form part of the true value at the port where the same may be entered, upon which the duties shall be assessed. And it shall be the duty of the collector within whose district the same may be imported or entered to cause the dutiable value of such imports to be appraised, estimated and ascertained in accordance with the provisions of existing laws; and if the appraised value thereof shall exceed by ten per centum or more the value so declared on the entry, then, in addition to the duties imposed by law on the same, there shall be levied, collected and paid a duty of twenty per centum ad valorum on such appraised value: *Provided, nevertheless,* That under no circumstances shall the duty be assessed upon an amount less than the invoice value, any law of Congress to the contrary notwithstanding."

This section of the act of 1846 requires the dutiable value to be ascertained "in accordance with the provisions of existing laws." The provisions of law existing, and here referred to, are as follows:

TARIFF OF 1842.

The 16th section of the act of 1842 (5 Stat., 563) provides that "it shall be the duty of the collector within whose district" [merchandise subject to *ad valorem duties*] "shall be imported or entered to cause the actual market value or wholesale price thereof, at the time when purchased, in the principal markets of the country from which the same shall have been imported into the United States, or of the yards, parcels, or quantities, as the case may be, to be appraised, estimated, and ascertained, and to such value or price, to be ascertained in the manner provided in this act, shall be added all costs and charges, except insurance, and including, in every case, a charge for commissions at the usual rates, as the true value at the port where the same may be entered, upon which duties shall be assessed."

And the 26th section (page 566) provides "that all provisions of any former law inconsistent with this act shall be, and the same are hereby, repealed."

There can be no doubt of the import of this language, and the instructions from the Secretary of the Treasury sustain it, with the omission of one important element of cost or value of goods at the port where they are entered; to show this we insert the following extracts from those instructions:

"The additions authorized by the 8th section to be made by the owner, consignee, or agent, 'in the entry to the cost or value given in the invoice,' where goods have been actually purchased, as also the costs and charges referred to, must be added at the time of making entry of the goods, and cannot be done subsequently. This privilege is obviously intended to afford the party an opportunity to relieve himself from the additional duty imposed by this section, where the

appraised value shall exceed, by ten per centum or more, the value 'so declared on the entry;' consequently, any such additions made, as aforesaid, are not obligatory upon, or to control the judgment of, the appraisers in estimating the value of the goods in question, who are, nevertheless, required to make appraisement of the same, in conformity with the provisions of existing laws.

"The principle upon which the appraisement is based is this: that the actual value of articles on shipboard at the last place of shipment to the United States, including all preceding expenses, duties, costs, charges, and transportation, *is the foreign value upon which the duty is to be assessed.* The costs and charges that are to be embraced in fixing the valuation, over and above the value of the article at the place of growth, production, or manufacture, are:

"1st. The transportation, shipment, and transhipment, with all the expenses included, from the place of growth, production, or manufacture, whether by land or water carriage, to the vessel in which shipment is made to the United States. Included in these estimates is the value of the sack, package, box, crate, hogshead, barrel, bale, cask, can, and covering of all kinds, bottles, jars, vessels, and demijohns.

"2d. Commission at the usual rate, but in no case less than two and a half per cent., and where there is a distinct brokerage, that to be added.

"3d. Export duties, including such duties at all places from the place of growth, production, or manufacture, to the first place of shipment to the United States.

"4th. Cost of placing cargoes on board ship, including drayage, labor, bill of lading, lighterage, town dues and shipping charges, dock and wharf dues, and all charges to place the articles on shipboard.

"Discounts are never to be allowed in any case, except on articles where it has been the uniform and established usage heretofore, and never more than the actual discount positively known to the appraiser.

"The freight from the place of shipment to the United States is not to be included in the valuation, and insurance is also excluded by law."

A careful examination of the provisions of the law and of the instructions just recited disclose two important changes made in the law by the Secretary of the Treasury: first, the one which declares that it is the *foreign value* upon which the duty is to be assessed; and, secondly, and naturally resulting from the first, that "the freight from the place of shipment to the United States is not to be included in the valuation, and insurance is also excluded by law."

The 16th section of the act of 1842 provides that after the foreign cost or value shall be ascertained there "shall be added *all costs and charges, except insurance*, and including, in every case, a charge for commissions at the usual rates, as the *true value* at the *port* where the same may be entered, upon which duties shall be assessed."

It is difficult to see how it could be supposed that the language here used, that all "costs and charges" should be included in the dutiable value at the port of entry in the United States, should mean to exclude the freight of merchandise upon the voyage of importation, and

equally so to conceive how the words "except *insurance*" should include the freight. If the expenses upon the voyage as among the costs and charges had not been in contemplation, why should insurance, which is one of those expenses, have been excepted, and not be allowed to form an element or increment of the dutiable value?

No one doubts the insurance here spoken of was the insurance upon the goods from the foreign port to the port of entry in the United States, which is usually included under the terms "costs and charges," and the exception was probably made as an inducement to importers to insure their goods; but whatever the motive, the exception of this item only from the costs and charges, by all the rules of construction, would clearly show that all other items of expense, such as freight, were to be included in estimating the value of goods at the port of entry.

Important and clear as the language and intention of the law appear to us, it was obviously not so to the Secretary, for he says "the freight from the last place of shipment to the United States is not to be included in the valuation, and insurance is ALSO excluded by law." He must have understood that both freight and insurance were included in the terms "costs and charges," by their common acceptation among commercial and legal men, and hence it was necessary, to justify the exclusion of the freight from the valuation, to use this form of expression, after excluding freight, "and insurance, which is *also* excluded by law," an adroit way of saying that a law which expressly excepts but *one* thing actually excepts *two*, and thus embrace, with a *trifling* item of cost which was excepted in terms, an *important* item which was *not* excepted at all, from the additions to be made to the value of goods abroad in determining their dutiable value at the port of entry.

There is to us a significance in the character of these instructions as to charges to be added to the first cost; they are mentioned first in general terms, and then in tedious and minute detail of twenty or thirty specific items, which, if of consequence enough to be mentioned at all, would threaten to exceed the original cost of the goods, and then to close with an order not to include the freight, which was more important than all the others combined.

But one other reference to these instructions is deemed necessary to a full understanding of their bearing upon the class of cases which we are now investigating, which is to the 8th section of the act of 1846, viz: This section further provides "That, under no circumstances, shall the duty be assessed upon an amount less than the invoice value, any law of Congress to the contrary notwithstanding." This part of the law was, it seems, supposed by the Secretary to refer to former practices of making allowances. We think it refers to both "*discounts* and *allowances*." In reference to making allowances, the Secretary begins with the precise word with which his extract from the law ended, going on to say: "*Notwithstanding* the very comprehensive language of this proviso, it is believed that Congress could not have intended to abolish all the allowances made under previous laws for deficiencies and for damages occurring during the voyage of importation." He then goes on to guard against too great allowances, &c. As we have already said, we think the proviso forbids all discounts

and allowances which would reduce the value at the port of entry below the invoice value; but the Secretary says, in his instructions, "discounts are never to be allowed in any case, except on articles where it has been the uniform and established usage heretofore, and never more than the actual discount positively known to the appraiser."

From these quotations it is plain that the principal additions which the law required to be made to the foreign cost of merchandise, to bring it up to its dutiable value at the port of entry, are counteracted by these instructions, and its most clear and "comprehensive language" (preventing discounts and allowances being made, so as to reduce the amount upon which the duty shall be assessed below the foreign cost or invoice value) is also rendered inoperative; and this, too, because the Secretary did not believe Congress intended what it said in the law, of which common report gives him the paternity. The effect of these alterations of the clear and obvious provisions of the law are seen in the cases we are considering, in an allowance which reduced the invoice value and the amount of duties, as already stated, two hundred and nineteen dollars. But this is trifling compared with the omission of the costs and charges required by the express provisions of the law. We have no means of knowing the extent of the loss to the revenue from these omissions, but have made inquiry of an importer of brandy from the same place, and in the same year that the largest of the importations under review were made, and learn that the whole costs and charges added by him to the brandy he imported, in addition to the invoice value upon which he paid duty, was thirty cents a gallon, at the port of New York. His brandy was invoiced at nearly double the cost of these we are now considering, but in so far as the charge of freight (the largest item) has influence upon the cost, it would be as much on the low as on the higher priced article; but making no allowance for this, and reducing all the costs and charges in proportion to the reduced cost of the article, it would make the costs and charges in these cases about fifteen cents per gallon upon these importations. The number of casks was 3,123, and, by the actual gauge at the port of entry, contained 138,328 gallons, which, at fifteen cents per gallon for costs and charges of importation, &c., would amount to $20,749 20, and the duty being 100 per cent., would amount to the same sum, which should have been paid in addition to the $84,908 which was paid by the claimants. Thus, if the whole question were still an open one between the importers and the government, it is apparent that, instead of the claimants having a claim for overpaid duties of two thousand dollars, there would be found to be due from them more than ten times that amount to the government under a just construction and execution of the law which existed during all the time the liquors were being imported. There are many cases where the construction of the law which has prevailed would show still greater proportional losses to the revenues of the government, and these losses are still pressing upon its revenues and prolonging its financial difficulties to the extent of several millions annually; and, in the judgment of the committee, demand an early provisionof law to prevent their continuance.

The committee herewith return the papers with the bill referred to them, with a recommendation that it do not pass.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 51.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1858.—Ordered to be printed.

Mr. POLK made the following

REPORT.

[To accompany Bill S. 123.]

The Committee on Claims, to whom was referred the petition of Henry Hubbard, report:

This claim is as follows, viz:

For services as agent in charge of the public property at Ashtabula harbor	$672 75
And interest from the discontinuance of his service	188 36
	861 11

On a reference of the case to the War Department, the committee is informed that "the amount claimed by Mr. Hubbard for services ($672 75) is shown by his accounts to be due to him;" and that "the claim cannot be paid unless provided for by Congress," "the appropriation being exhausted." This seems to settle the justice of the claim, so far as the principal is concerned.

In regard to the interest, it is believed to have been settled by Congress, in its action on similar claims, that in cases where the amount due is clearly ascertained and admitted by the government, and payment is delayed for want of appropriation, it should be allowed.

It appears from a statement of Colonel Abert, chief of the Bureau of Topographical Engineers, dated June 11, 1856, that this claim was then admitted to be due, and the committee have agreed that interest should be allowed from that date, and they report a bill accordingly.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 52.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1858.—Ordered to be printed.

Mr. DURKEE made the following

REPORT.

[To accompany Bill S. 125.]

The Committee on Revolutionary Claims, to whom was referred the memorial of the legal representatives of James Bell, late of Chambly, in the province of Lower Canada, deceased, beg leave to report:

That they have examined this claim and found it to be just and equitable. They have also examined a report heretofore made on the same subject, April 9, 1856, by Mr. Durkee, of the Senate. That report they believe to be correct in argument, and just in conclusion, and therefore adopt it as their own. It is as follows:

IN THE SENATE, *April* 9, 1856.

The Committee on Revolutionary Claims, to whom was referred the memorial of the legal representatives of James Bell, late of Chambly, in the province of Lower Canada, deceased, beg leave to report:

That they have examined with great diligence and care the claim presented by the memorialists in their petition and accompanying documents, and find that it is just and sustained by satisfactory proof. This claim was brought to the attention of Congress as early as 1794, when a report in its favor was submitted to Congress by the committee to whom it was referred. Subsequently a favorable report was made to Congress on this case by Albert Gallatin, then Secretary of the Treasury. From this period until the death of Mr. Bell, in 1814, the claim was constantly prosecuted; but after his death it was neglected by his children, until they learned that the statute of limitation enacted by Congress was no longer rigidly enforced, when they again brought it forward in the shape of a memorial to Congress. Few cases brought to the attention of the committee have commended themselves to their sense of justice more strongly than this. On the faith of a proclamation issued by Washington himself, and addressed to the people of Canada at the time of its invasion by General Montgomery, Mr. Bell not only furnished the troops with supplies of arms, pro-

visions, clothing, munitions of war, timber and cordage for the construction of a flotilla, but joined the army in person, and led the assault on Fort Chambly at the head of a company of volunteers, raised and equipped at his own expense. The fort was captured, and Mr. Bell was wounded; but his enthusiasm in the cause of liberty did not abate. His ample means were all at the disposal of the American army, and were contributed freely to ensure the success of the expedition under the orders of Montgomery. After the fall of that gallant leader under the walls of Quebec, and the retreat of the army, Mr. Bell was taken prisoner, and would have been executed as a traitor but for the influence of certain powerful friends in Scotland, which was successfully exerted with the British general in his behalf. Through their instrumentality he was released, but his fortune was gone, and the remainder of his life was passed in seeking the payment of his claim against the government. In 1814 he died in poverty, leaving his claim as a legacy to his children, who have been pursuing it for the last quarter of a century.

In 1834 an act was passed by Congress for the relief of Mr. Bell's heirs. This act directed the accounting officers of the treasury to settle the several accounts of James Bell on equitable principles, for moneys advanced, services rendered, and for stores, materials, and supplies furnished, &c., with a proviso, however, inserted by the Senate, that the sum allowed should not exceed $5,727 03. In pursuance of this act the account was settled and found to amount to $27,147 54, which was made up of $6,056 34 principal and $21,091 20 interest. There was thus left due to the heirs a balance of $329 31 principal, and $21,091 20 interest.

That the claim was one on which interest was legitimately due, a reference to its character very clearly makes manifest. In almost all cases of like character interest has been paid by Congress. But should principal and interest both be paid, the committee doubt very much whether the memorialists will even then receive a sum equal to that which their ancestor expended in the first place. Your committee, however, do not feel authorized, in the computation of interest, to go further back than 1794, (eighteen years after the supplies were furnished and services rendered,) from the fact that they have no evidence before them that the claim was ever presented for payment until that time. This will reduce the interest as above stated about one-third. In the course of Mr. Bell's long imprisonment, and the conpulsion he was under to keep his vouchers out of the sight of the enemy, by whom they would have been used as evidence against him, many of them, according to the proof before the committee, were lost or destroyed. It is therefore believed that a large portion of the original claim remains unsubstantiated in consequence of the loss and destruction of the vouchers. For this reason, amongst others, the committee are of opinion that the $329 31, with interest thereon from the time of the former settlement, together with the balance of interest then remaining unpaid, are justly due the memorialists. They therefore report a bill in conformity with this view of the case, and annex to their report the reports of several committees, both of the Senate and House.

IN THE HOUSE OF REPRESENTATIVES, *February* 8, 1849.

Mr. BUTLER, from the Committee on Revolutionary Claims, made the following report:

The Committee on Revolutionary Claims, to whom was referred the memorial of the legal representatives of James Bell, late of Chambly, deceased, praying the balance due from the United States, have had the same, with the accompanying documents, under consideration, and make the following report:

The original merits of this claim have been heretofore examined by committees in the Senate and House, and reports fully setting forth the particular circumstances under which the claim arose, and scrutinizing its justness, have been made. The committee refer to a report made from the committee of the House by Mr. Young, January 16, 1834, and one by Mr. Leigh, in the Senate, February 2, 1835. No one can examine the documents and read these reports without being satisfied that the original claim was highly meritorious. The committee adopt these reports, and print them herewith.

On the 30th June, 1834, an act of Congress was passed for the relief of the heirs of James Bell, directing the proper accounting officers of the treasury to settle the several accounts of James Bell, late of Chambly, in the British province of Lower Canada, on equitable principles, for moneys advanced, services rendered, and for stores, materials, and supplies, &c., &c.; with this proviso, however, that the sum to be allowed said heirs shall not exceed the sum of five thousand seven hundred and twenty-seven dollars and three cents. In pursuance of this act, the account was settled by the accounting officers of the treasury, and a balance stated to be due from the United States of $27,147 54. This sum is made up of a balance of principal, $6,056 34, ascertained on settlement by the officers of the Treasury Department of the accounts of James Bell, under the act of 1834, and interest on the same from the 15th June, 1776, the time of closing the account, to the 30th June, 1834, the time of the settlement and statement of the balance due, by the Auditor, as appears from a certified copy of the account submitted to the committee.

By this act of 1834 the "proper accounting officers of the treasury" were made the arbitrators between the claimants and the United States, and their decision is in the nature of a judgment against the party found to be indebted. Of the amount found to be due the United States have paid a part only of the principal, and none of the interest. A balance of $329 31 of the principal is unquestionably due, but the interest has not been allowed, because, it is said, the act of 1834 does not authorize it. The act of 1834 says nothing about interest, and therefore, in terms, does not exclude it; and the committee think that a settlement of the accounts in pursuance of that act would give the claimants interest. In the first place, the claim is of a highly meritorious character, being "for *moneys advanced*, services rendered, and for stores, materials, and supplies of various kinds fur-

nished, &c., by him (James Bell) to the troops of the United States, and for the construction of vessels of war, and for wood for the garrison, including timber, taken to Ticonderoga, and excluding the charge for loss on continental money." Over two thousand dollars of the items allowed is for "money advanced," and the residue is for "supplies" principally. In the next place, the act directs that the accounts shall be settled "on equitable principles." This direction surely would not be complied with if interest were disallowed. It would be inequitable and unjust to refuse it. Debts due from individuals bear interest, and why should not the debts of the government? And in this case, in order to do justice, it is particularly necessary to allow interest, for it is the fault of the government, and not of the claimant, that the principal was not paid long since. The claim was presented as early as 1794, and faithfully pursued until at last a settlement was made and the balance ascertained, which balance was as justly due on the 15th June, 1776, as it was on the 30th of June, 1834, when the account was stated.

It is believed, also, that interest is due according to the laws of Congress and the practice of the Treasury Department. It is stated, in a compilation of the resolves and acts of Congress, called revolutionary claims, made by order of Congress, that, "by the laws or resolutions of the old Congress, *interest* was allowed on all claims, and to all creditors of the United States, from the time payment became due. There are a great number of resolutions of Congress to this effect. Reference is, however, particularly made to that of 3d of June, 1784."—(See journals of old Congress, vol. 4, page 443.)

The resolution referred to is in these words, viz: "That an interest of six per cent. per annum shall be allowed to all creditors of the United States for supplies furnished, or services done, from the time the payment became due."

Many cases are enumerated in which interest has been allowed.

Nineteen cases, among which was the one now under consideration, passed the House of Representatives at the 1st session 24th Congress, with *interest*. These bills passed the Senate during the last two days of the session, but with regard to interest it was agreed, as it is said, that the interest should be stricken out, *without prejudice to the rights of the parties*, each to be adjusted thereafter according to its merits, or by general rule, if any should be adopted. On most of these cases interest appears to have been subsequently allowed; and in the case of James Bell, at the 2d session 23d Congress, a bill was reported in the Senate for the interest on the claim, but was not acted on. The bill was renewed the 2d session of the 24th Congress, passed the Senate, but was not finally acted on in the House.

It is stated in the compilation before referred to, which was made in pursuance of a resolution of 11th April, 1836, that seventeen hundred and fifty-four cases had been allowed *with interest*, and fifty-four without interest.

It appears, also, from a report of the Register of the Treasury, made in 1836, that all certificates of public debt issued by the Register of the Treasury, by the commissioner of army accounts, and by the commissioners for settling the accounts of *individuals* in the several States,

and in the quartermaster's, commissary's, marine, and clothing departments, for *services rendered* or supplies furnished during the war of the revolution, or in fulfillment of promises contained in any ordinance or resolution of the old Congress, were on interest at six per cent. from the termination of the service, or from the time the supplies were furnished.

The committee being of the opinion that the balance of the principal, viz: $329 31, and the interest, as originally stated by the accounting officer, ought to be paid to the legal representatives of James Bell, report a bill accordingly.

IN SENATE OF THE UNITED STATES, *February* 2, 1835.

The Committee on Revolutionary Claims, to whom was referred the memorial of Daniel Cameron and Margaret, his wife, legal representatives of James Bell, deceased, report:

That William Bell and the memorialist, Margaret Cameron, claiming, as the only children and heirs-at-law of James Bell, late of Chambly, in the province of Lower Canada, deceased, preferred their petition to the House of Representatives at the last session of Congress, praying remuneration and compensation for advances of money, supplies furnished, and services rendered by their father, James Bell, to and for the American army in Canada, from the fall of the year 1775, till June, 1776. The merits of the claim seem to have been examined very carefully by the Committee on Revolutionary Claims of that House, which made a full and detailed report on the subject. Upon the case stated in that report, the committee recommended, and the House passed a bill providing for the adjustment of the claim by the proper officers of the treasury, and for payment of the principal sum which should be found due, with interest thereon from the time when the debt accrued. When this bill came to the Senate it was so amended as to provide that not more than $5,727 03 of the principal should be paid, and to disallow interest altogether; and with these amendments the act passed for the relief of the petitioners. Upon the adjustment of the account at the treasury, it was found that the principal sum justly due to the claimants was $6,056 34, to which was applied the sum of $5,728 03, appropriated by the act; leaving a balance of $329 31 principal still due to the petitioners.

The memorialists now ask that the above balance of the principal, ($329 31,) and the interest on the whole debt originally due them, computed from the time the claim accrued, may be allowed and paid them.

The report made by the Committee on Revolutionary Claims of the House of Representatives at the last session on this claim is hereto appended. By that report it appears that moneys were advanced, and sundry supplies furnished by the said William Bell, deceased, to the American army in Canada, between the fall of the year 1775, and June, 1776; and that he also rendered personal services, exposing himself to great losses, to imprisonment, and jeopardy of life. That he took the earliest opportunity practicable to present his pecuniary claims to Congress. That probably the claim and the proofs of it

were in fact lodged in the public offices shortly after the peace. That in 1794 Mr. Bell came from Canada to Philadelphia, to attend to the claim in person, and obtain payment of the debt due to him, and found at the treasury no obstacle to his claim but the then statute of limitations. That he thereupon applied to Congress for relief, and though the committee to which the claim was referred reported that, from the particular situation of the claim, and its high merits, the statute of limitations ought to be waived in regard to it, the session passed off without any provision being made for the satisfaction of it. That Mr. Bell afterwards appointed an agent to prosecute the claim for him, who frequently presented it to Congress. That in 1802 a very favorable report was made on it to the House of Representatives by Mr. Gallatin, then Secretary of the Treasury, to whom it was referred; but that report, after suggesting reasons for believing that Mr. Bell had used, perhaps, all means in his power to obtain an early settlement of his claim, referred the expediency of opening the statute of limitations back again to Congress. That the claim was again presented to Congress in 1810, and repelled only on the ground of the statute of limitations. That Mr. Bell died in 1814, and that his children never presented the claim until they found that the policy of the statute of limitations was no longer rigidly enforced, but, on the contrary, was entirely disregarded.

Upon this state of facts, approved as just and true by both Houses of Congress in the act passed for paying claimants their principal, it seems to your committee that the government ought to have made provision for the satisfaction of the claim, with interest from the time it accrued, as soon as it was presented, which, it is admitted, was probably early after the peace. That provision ought to have been made for the payment of the principal, with like interest, in 1794, in 1802, and in 1810, when the claim was presented to Congress and its justice admitted. And that in rendering justice to the claimants at the late day at which it was at last proposed to be rendered to them, it behooved Congress to render full justice; that is, pay the claimants the principal due to them, with interest thereon from the time the debt accrued.

Therefore, the committee report a bill, providing for the payment of the balance of the principal due the memorialists, and of the interest stated by the officers of the treasury to be due on the whole amount of the principal debt.

IN THE HOUSE OF REPRESENTATIVES, *January* 16, 1834.

Mr. YOUNG, from the Committee on Revolutionary Claims, made the following report:

The Committee on Revolutionary Claims, to whom was referred the petition of William Bell and Margaret Cameron, (wife of Daniel Cameron,) only children and heirs-at-law of James Bell, late of Chambly, in the province of Lower Canada, report:

This claim having been of long standing, and its merits, as presented, depending, in some measure, on the peculiar circumstances

attending its origin, progress, and continuance, the committee deem it their duty to the House to give the facts connected with it somewhat in detail.

The petition states, in substance, that in the fall of the year 1775, when the advance of the army of the United States entered Canada, James Bell, the father of the memorialist, resided at Chamble, or Chambly, in that province, doing business as a merchant; that when the troops entered the province, a proclamation, in the name of General Washington, was distributed among the inhabitants, desiring them to remain in quietness at home, or join the army and assist in the cause of liberty. The proclamation also invited the inhabitants to furnish "such supplies as the country afforded," and pledged, not only the government of the United States, but General Washington himself, in express terms, that "ample compensation" should be made.

Relying on the proclamation, and inclined to the spirit of freedom, Mr. Bell immediately attached himself to the cause and fortunes of the United States, and, during the night, assisted in raising those volunteers which it is well known constituted the principal force in the attack on Fort Chambly, and before daybreak joined the very inadequate force which had arrived there under Major Brown; and, being well acquainted with the fortification, led the way in the assault, which soon terminated in the capture of the fort, and the surrender of the garrison prisoners of war.

Mr. Bell having now forfeited the favor of the friends of the crown, and staked his all in the issue of the struggle, yielded not only his own personal services, but his whole means and credit, to aid and sustain the invading army.

General Montgomery, arriving there soon after, employed Mr. Bell in transporting his boats from Lake Champlain to the St. Lawrence, at La Prairie, and, before he left that vicinity, from a knowledge of his zeal, activity, and usefulness, constituted him a kind of public agent to superintend the artificers employed in repairing the fortifications there, and to procure the materials, and also to procure materials for building certain gondolas and other boats ordered to be built by a resolution of Congress, in which service he was afterwards continued by regular appointments from General Wooster and other general officers, till the final departure of the United States troops from that place in June, 1776; during all which time, in addition to his personal services, he furnished supplies to the garrison, of almost every kind, from his own store in the neighborhood, together with many materials for the purposes before mentioned, and for a considerable time paid the workmen under his superintendence out of his own funds. And these services, supplies, and advances, together with the expense in the transportation of the boats to the St. Lawrence, as before mentioned, constitute the claim now under consideration. The representation that Mr. Bell assisted in raising the volunteers, and led the army in the assault, is not expressly stated in the testimony; but his zeal, activity and readiness to *do* and *supply* everything in his power, is very fully and distinctly proved, as well as implied, from the language and nature of the correspondence with him while thus employed.

All the other representations which are in any way material to a

general understanding of the claim, and its merits thus far, are confirmed by the history of those times—the proclamation of General Washington, on file with the petition, the correspondence of the officers of the army with Mr. Bell at the time, together with their special certificates to some of the larger items, and their general certificates since, embracing the whole time, and recognizing their general correctness.

The petitioners (by way of showing that their claim ought not to be prejudiced because payment has been so long deferred) further state, what is a well known fact, that our troops were unexpectedly under the necessity of abandoning and destroying the works at Fort Chambly, and other places, and of retreating with all despatch out of the province, leaving no time or opportunity for settling accounts. Mr. Bell, however, collected and arranged his papers as well as the circumstances would permit, overtook the retreating army at St. John's, and delivered over his accounts to General Hazen, who engaged to see them speedily adjusted and settled with the United States government, and the avails transmitted. This circumstance is of considerable importance in the further history of this case, and its claim to attention and favor is distinctly stated by General Hazen, with the particular circumstances of the manner of his adjusting and bestowing them for safekeeping.

A British force now took possession of Fort Chambly, and re-established the authority of the crown in that region, and Mr. Bell, as is alleged, and as might be well expected from his recent conduct, was immediately arrested for high treason and thrown into prison, and after a long confinement escaped with his life, through the intercession of some Scottish friends during a temporary relaxation of rigor, while Sir Guy Carlton was absent in England, and that on condition of his keeping himself in obscurity. As soon as peace was established between the two governments, and Mr. Bell was released from these embarrassments, he renewed his exertions to obtain compensation for his claims, and sent a power of attorney to General Hazen, with full powers to represent him and close his accounts with the United States; but, before anything was effected, General Hazen was seized with the dumb palsy, as is a well known fact, and continued for some years unable to either write or speak. Finding his affairs in this situation, in 1794 Mr. Bell came from Canada to Philadelphia, to attend to his claim in person with the government. But now he found his claim barred by the statute of limitations; and though it seems to be admitted that his account had been previously presented at the proper office, and during the suspension of the act of limitation, yet it was decided that the suspension could not be applied to him, as he was not an inhabitant of the United States. Mr. Bell then applied to Congress for redress, and though the committee to whom it was referred reported that, from the particular situation of the claim, and its high merits, the statute of limitations ought to be waived with regard to it, the session passed off, and Mr. Bell was obliged to return home disappointed, discouraged, and poor, and unable afterwards to attend on Congress. He, however, appointed one Peter Mills his agent to prosecute his claim, who, it seems by the files, frequently presented it to Congress, and in 1802 a very favorable report was made on it to the House of Representatives, by Mr. Gallatin, then Secretary of the

Treasury, to whom it had been referred; but this report, after suggesting the reasons for believing that Mr. Bell had used, perhaps, all the means in his power for an early settlement of his claim, referred the expediency of opening the statute of limitations back on Congress again. In 1810 his claim appears again to be before Congress, and the claim again critically examined, and its merits earnestly urged; but still the statute of limitations resisted every attack and every appeal. In 1814 Mr. Bell died in poverty, broken down with age, disappointment, and misfortune. His children, learning that the absolute dominion of the statute of limitations had been shaken, have taken courage and again presented this claim.

From a careful consideration of these facts the committee feel warranted in coming, in this stage of the investigation, to these general conclusions. In the first place that, in the language of Mr. Gallatin, in the report referred to, Mr. Bell "did, in the years 1775 and 1776, render services and furnish supplies to an indefinite extent and amount, to the continental army in Canada, and that it is probable that he has never received any compensation." And, in the second place, that the claims ought not to be prejudiced by this long lapse of time, "on account of," in the further language of Mr. Gallatin's report, "the precipitate retreat of the American army from Canada; of the petitioner's being a resident in that province; and of his having used, perhaps, the best means in his power, under those circumstances, to have his accounts settled at an early period."

Having come to these general conclusions, the committee will proceed to examine the items of the account and their vouchers more particularly. These several accounts, as before stated, extending during the whole time the American army had possession of Fort Chambly, are in separate bills, made up from one date to another, mostly under separate heads, according to the nature of the accounts, whether materials, advances, or supplies; having also reference to the several officers who successively or occasionally had the command or direction of the plan or subject matter. They exhibit, also, the several items, with the date of delivery, and generally the person to whom delivered; and in the case of the advances to the artificers, the days of service, the separate prices of each, together with the particular kind and plan of employment in which they were severally engaged; in short, they exhibit every appearance of being from the original entries at the time, and the bills now exhibited appear, from various memorandums on them, and references to them in reports made, to be the claims as originally presented. Some of the more prominent items are certified by officers knowing to their delivery. General Hazen, Major Butterfield, Captain Hamtramck, and others, specify many of the articles Mr. Bell was in the habit of furnishing, and bear testimony to his readiness, at all times, to furnish whatever was in his power; and each account is duly sworn to by Mr. Bell himself. This, it must be presumed, is the amount of testimony his case was susceptible of; for it will be recollected that General Montgomery was slain in a few weeks after he left Fort Chambly; General Thomas died in the spring, not long after he arrived in Canada; General Wooster received his mortal wound early the next spring, and General Arnold was soon in a situa-

tion not to be consulted on such subjects; and it might be added, if necessary, that a number of officers, Major Butterfield and others, who had been on duty in that region, were prisoners to the British Colonel McLeon, for some time near the close of the campaign. General Thompson and Colonel Irwin were also made prisoners about the same time. By a resolution of Congress, the revolutionary officers in the southern department, or a portion of them, were permitted to substantiate their claims by their own oaths, from the necessity of the case, it being utterly impossible to procure regular vouchers to all their transactions in such a confused state of warfare as prevailed at many times in many places. Mr. Bell was also an officer in whom the government or its officers had placed special confidence, and was situated amidst similar, and in many respects greater difficulties. There seems to be no reason, therefore, why he should not receive similar privileges. In the case of the heirs of Francis Cazeau, settled as late as 1817, the precedent is much stronger in Mr. Bell's favor, being almost a parallel case in all parts. Mr. Cazeau was not a known officer, to be sure, but one in whom the government placed special confidence, as the testimony in his case shows; his was then a single case like this. He resided in Canada, and had furnished supplies a part of the same time with Mr. Bell, for a portion of the army further down the St. Lawrence.

In the progress of this claim, the oath of Mr. Cazeau was directed to be received in support of it by a special resolve of Congress.

The committee have taken into consideration some objections that might arise in view of this claim.

It might be inquired, in the first place, why those supplies were so little connected with the proper contracting officers' accounts, and were not furnished through them. It appears, by the correspondence on file, and the style of the accounts seem to imply it, that a particular discretion was allowed to Mr. Bell, and confided to him; and that, for certain reasons, probably on account of the state of things there—for the same appears in Mr. Cazeau's case—he was treated as somewhat independent of ordinary directions, as it appears that orders and directions were often given to him to be communicated, or not, as he might see fit, to the commanding officers at the fort. It may also be noticed here that it appears, incidentally, from the papers on file, that he had other transactions with the quartermaster, and that certain articles, which are proved by Mr. Bell's certificates to have been delivered to the garrison, are not charged in his present account, because they were to be accounted for by the quartermasters with whom he had in these cases contracted.

Again, it may be inquired whether it is possible or probable that the charges in question have remained unpaid. The facts just stated relieve the difficulty, in some measure, by showing that not all the supplies which Mr. Bell furnished at the time were charged or claimed in this account. And, as a more general consideration, it may be remembered that the testimony clearly shows that these accounts were delivered to General Hazen, at St. John's, at the time these services and supplies unexpectedly closed—an officer, probably, who knew as much about the account, and the state of things as they existed as any other; and that they have been claimed and insisted on, at short intervals,

ever since; and what is more conclusive, were critically examined, as the papers show, at Philadelphia, in 1794, when the returns of the army, and the accounts of the disbursing officers, were then in existence, and any advances by them to Mr. Bell would have appeared as a part of these claims. Yet no one account, certificate, report, or examination, of which so many have been made in this case, under the scrutinizing feeling of those times, including the scrutinizing eye of office of Mr. Gallatin, has cast the least shade of suspicion or doubt on the genuineness and correctness of these accounts as presented, except in one item, and that the committee are not disposed to allow, not for any doubt of the accuracy of the charge itself, but on account of the settled practice of the government. This charge is for loss sustained on continental money paid him by the officers and others on their private accounts. The committee, therefore, under all the circumstances of this case, conclude that both justice and precedent, the pledge of General Washington, and the faith of the government, require that this case should now be settled at the proper offices where such claims are usually examined and settled.

The committee therefore report a bill in conformity with the principles expressed in this report.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 53.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1858.—Ordered to be printed.

Mr. CRITTENDEN made the following

REPORT.

[To accompany Bill S. 45.]

The select committee to whom was referred the bill "to provide for the ascertainment and satisfaction of claims of American citizens for spoliations committed by the French prior to the thirty-first day of July, one thousand eight hundred and one," have had the same under consideration, and respectfully report:

That this subject has been often before the Senate, and has heretofore received the most thorough investigation and discussion. Sixteen reports in favor of the claims have been made by committees of the Senate, and seventeen like favorable reports were made by committees of the House of Representatives. That the Senate has always sanctioned those claims, and as often as six times passed bills for their ascertainment and satisfaction; that on two occasions both houses of Congress have passed such bills, and they were prevented from becoming laws by the veto of the President: the first, by President Polk, on the bill for five millions of dollars, payable in land scrip, his objections to which were, chiefly, a doubt of their validity, and that the treasury, then very low, and the duration of the existing war uncertain, would require all the revenue that the public lands could furnish; and the second, by President Pierce, on the bill for the like sum of five millions of dollars, payable in five per cent. stock, redeemable at the pleasure of the government, chiefly on the ground that these claims were provided for by the conventions with France of 1803 and 1831; whereas it seems to the committee that neither of said conventions contained any provision for them, and that France was released definitively from all liability for them at a much earlier period, to wit, by the convention of the 30th of September, 1800.

That the committee, to avoid multiplying the numerous and voluminous reports heretofore made, and to which they can add nothing, have determined to adopt as part of this the reports in favor of these claims made by the Hon. Mr. Livingston and the Hon. Mr. Morehead, respectively, chairmen of the committees of the Senate to whom the subject was referred—the first on the 14th of January, 1831, and the

other on the 10th February, 1847. The committee also refer to, and make parts of this report, the messages that accompanied the Presidential vetoes, before alluded to, and the minority reports following, namely: by the Hon. Mr. Forsyth, on the 25th of March, 1824, and by the Hon. Mr. Cambreleng, on the 21st of February, 1835, in the House of Representatives.

The committee believe that in this mode they will most fully and fairly present the whole subject to the consideration of the Senate.

They believe that said claims are just, and that provision ought to be made for their satisfaction, and they recommend the passage of the bill referred to them.

IN SENATE OF THE UNITED STATES, *February* 10, 1847.

Mr. MOREHEAD made the following

REPORT.

[To accompany Bill S. 156.)

The select committee to whom was referred the memorials and petitions from citizens of the United States, residing in all sections of the Union, who suffered by French spoliations on their property prior to the ratification of the convention with France of the 30th of September, 1800, *report:*

These claims are of great magnitude in amount, and are set forth by the petitioners as constituting a valid obligation on the United States to satisfy them, on the ground that they have been taken to the public use; and they invoke the constitutional provision in their favor, "nor shall private property be taken for public use without just compensation."

The claims are for nearly two thousand vessels, with more or less valuable cargoes, belonging to our citizens, which, while engaged in lawful commerce, were captured by the French, in violation of existing treaties and of international law; and they date from the year 1791 up to the ratification of the convention of 1800, to wit, the 31st of July, 1801, embracing the whole period of the French revolution.

The subject has, from early in 1802, been before Congress—first on the petition of the original claimants, who have since, with very few exceptions, departed this life; and then by their successors, in the character of executors, administrators, widows, heirs, &c.; and the favorable consideration of their case has also been freely urged upon Congress by the legislatures of many of the States, viz: Maine, Massachusetts, Connecticut, Rhode Island, Pennsylvania, Delaware, Maryland, Alabama.

The representations of the claimants have been uniform and constant, and have given rise to twenty-eight reports of committees, including the present; whereof twenty-two were favorable, two were divided, and three were adverse to the petitioners. These numerous

reports cover the whole ground on which the claims rest, and also the objections to them. They are all printed among the congressional documents, and may be readily referred to, aided by the following descriptive list:

Statement of reports of committees on French spoliations prior to July 31, 1801.

No. 1. In the House, by Mr. Giles, from a select committee, April 22, 1802; favorable statement of facts without coming to any conclusion.

No. 2. House, Mr. Marion, select committee, February 18, 1807, including and adopting Mr. Giles' report of April 22, 1802; favorable.

No. 3. Senate, Mr. Roberts, Committee of Claims, March 3, 1818; adverse.

No. 4. House, Mr. Russell, Foreign Affairs, January 31, 1822; adverse.

No. 5. House, Mr. Forsyth, Foreign Affairs, March 25, 1824; adverse.

No. 6. Senate, Mr. Holmes, select committee, February 8, 1827; favorable.

No. 7. House, Mr. Edward Everett, Foreign Affairs, May 21, 1828; favorable.

No. 8. Senate, Mr. Chambers, select committee, May 24, 1828; favorable.

No. 9. Senate, Mr. Chambers, select committee, February 11, 1829; favorable; bill.

No. 10. House, Mr. Edward Everett, Foreign Affairs, February 16, 1829; favorable.

No. 11. Senate, Mr. Edward Livingston, select committee, February 22, 1830; favorable; bill.

No. 12. Senate, Mr. Edward Livingston, select committee, December 21, 1830; favorable; bill.

No 13. Senate, Mr. Edward Livingston, select committee, (by bill,) January 14, 1831; favorable; bill.

No. 14. Senate, Mr. Wilkins, select committee, (by bill,) December 20, 1831; favorable; bill.

No. 15. Senate, Mr. Webster, select committee, (by bill,) December 10, 1834; favorable; bill. And said bill was voted February 3, 1835: yeas 25, nays 20.

No. 16. House, Mr. Edward Everett, Foreign Affairs, February 21, 1835; favorable statement.

No. 16. House, Mr. Cambreleng, Foreign Affairs, (minority,) February 21, 1835; adverse statement.

No. 17. House, Mr. Howard, Foreign Affairs, January 20, 1838; favorable; bill.

No. 18. House, Mr. Cushing, (individual, by consent of the House,) March 31, 1838; favorable.

No. 19. House, Mr. Cushing, Foreign Affairs, April 4, 1840; favorable; bill.

No. 19. House, Mr. Pickens, Foreign Affairs, (minority,) April 4, 1840; adverse statement.

No. 20. House, Mr. Cushing, Foreign Affairs, December 29, 1841; favorable; bill.

No. 21. Senate, Mr. Choate, Foreign Relations, (by bill,) January 28, 1842; favorable; bill.

No. 22. Senate, Mr. Choate, Foreign Relations, (by bill,) January 13, 1843; favorable; bill.

No. 23. House, Mr. C. J. Ingersoll, Foreign Affairs, (by bill,) April 17, 1844; favorable; bill.

No. 24. Senate, Mr. Choate, Foreign Relations, (by bill,) May 29, 1844; favorable; bill.

No. 25. Senate, Mr. Choate, Foreign Relations, (by bill,) December 23, 1844; favorable; bill. And said bill was ordered to be engrossed and read a third time on the 10th February, 1845: yeas 26, nays 15.

No. 26. Senate, Mr. J. M. Clayton, select committee, (by bill,) February 2, 1846; favorable; bill. This bill was voted by the Senate on the 9th June, 1846, and passed: yeas 27, nays 23.

No. 27. House, Mr. Truman Smith, Committee on Foreign Affairs, (by bill,) March, 1846. This bill was voted by the House on the 4th August, 1846, and passed: yeas 94, nays 87.

In all the discussions between the two governments in relation to these claims, which terminated with the exchange of ratifications of the convention, (and was never afterwards resumed,) they were considered on all sides as valid claims against France, and the obligation on her part to satisfy them was often and freely acknowledged, and in no instance denied. Although the two governments agreed perfectly that the obligation to satisfy them rested upon France, and was no longer a subject of controversy between them, there were, however, other subjects, of a *national* character, of the deepest importance to both, which, in the progress of events, were placed beyond the power of either to reconcile with the friendly disposition and good faith which each professed for the other.

The political relations between the United States and France at that period, and the events that disturbed them even to a point which threatened a conflict, have been fully developed in the luminous reports referred to. The committee, at this time, need only glance at them.

By the treaties with France of February 6, 1778, we had guarantied to her the integrity of her West India possessions *forever;* and we had also secured in her favor the *exclusive* use of our ports and harbors to her ships of war, her privateers and prizes, in all her future wars. The considerations which she gave for these important privileges were most ample. When the war of 1793 between Great Britain and France broke out, not only that fact, but the motives leading to it, sensibly affected the relations between the United States and France, from the absolute necessity of deciding upon the relative rights and duties flowing from the guarantee and privileges just mentioned. Whether that war was offensive or defensive on the part of France, was early made a question here; but it was soon abandoned, and the

instructions to our envoys to France, (Messrs. Pinkney, Marshall, and Gerry,) of July 15, 1797, (5th volume Senate Documents, 1st session, 19th Congress, Doc. 307, page 453,) in reference to it, shows that it was properly abandoned. "It is known to you," say the instructions, "that this affection [for the people of France] rose to enthusiasm when the war was kindled between France and the powers of Europe, *which were combined against her for the avowed purpose of restoring the monarchy*" Under these circumstances, France could not have been the aggressor in the war; and, accordingly, we freely permitted the use of our ports for her vessels of war and their prizes. Against this use the British government remonstrated long and earnestly, but in vain; for our Secretary of State, (Mr. Jefferson,) in his letter of September 9, 1793, (*ib.*, 133, page 219,) to the British minister, declared, "though the admission of the prizes and privateers of France is exclusive, yet it is the effect of treaty, made long ago for valuable considerations—not with a view to the present circumstances, nor against any nation in particular, but all in general—and may therefore be faithfully observed without offence to any; and we mean faithfully to observe it." Thereupon the British remonstrances were quieted, and France continued to enjoy this right freely, with our entire assent, up to the ratification of Mr. Jay's treaty with Great Britain, of November 19, 1794, the ratification of which took place on the 6th May, 1796. Our first act under this treaty, by our own construction of its import, brought us into direct conflict with France with respect to the long use of our ports for her vessels of war and their prizes. The French minister complained to the President of this construction, who required from the Secretary of State a report thereon, which was made on the 15th July, 1796, (*ib.*, Doc. 225, page 345,) and contains the following: "Mr. Adet asks whether the President has caused orders to be given to prevent the sale of prizes conducted into the ports of the United States by vessels of the republic, or privateers armed under its authority. On this, I have the honor to inform you, that the 24th article of the British treaty having explicitly forbidden the arming of privateers, and the selling of their prizes in the ports of the United States, the Secretary of the Treasury prepared, as a matter of course, circular letters to the collectors to conform to the restrictions contained in that article, as the law of the land. This was the more necessary, as formerly the collectors had been instructed to admit to an entry and sale the prizes brought into our ports." To that unfortunate construction are very probably ascribable the difficulties which subsequently embarrassed our relations and negotiations with France up to the conclusion of the convention of 1800, an illustration of which will be found in the report of our envoys (Messrs. Ellsworth, Davie, and Murray,) to our Secretary of State, dated October 4, 1800, (*ib.*, Doc. 390, page 641.) They say: "The claim of indemnities [for the spoliation claims now under consideration,] brought forward by them was, early in the negotiation, connected by the French ministers with that of a restoration of treaties, for the infractions of which the indemnities were principally claimed. To obviate this embarrassment, which it had not been difficult to foresee, the American ministers urged, in the spirit of their instructions, that those treaties having

been violated by one party, and renounced by the other, a priority had attached in favor of the treaty with *Great Britain, who had thereby acquired an exclusive right for the introduction of prizes; wherefore, that right could not be restored to France.*"

It is thus shown that the interdict of this exclusive right to France, as asserted by the Secretary of State, was founded on the British treaty of 1794, while our envoys assert that it was founded upon our act of Congress of July 7, 1798, which declared our treaties with France void; neither of which positions, it is respectfully submitted, is either tenable or plausible.

At the period when this interdict was enforced, (in 1796,) France was in single-handed conflict with nearly all Europe combined, who threatened to starve the French nation. There had been an entire failure of her crops; she was afflicted with a civil war; her colonies had fallen under the arms of Great Britain, without any effort on our part to save them under the guarantee, or even to remonstrate for their protection. It was in this state of things, and in the frenzied excitement which attended them, that France judged of our motives and conduct with regard to the British treaty. Her conclusions were strongly vindictive. She charged our government with perfidy, and secretly ordered the ocean to be swept of our vessels, as had indeed been done with but little less rigor for years before, and prescribed arbitrary and illegal rules for her privateers and courts to secure the capture and condemnation of every American vessel that could be found—even those innocently bound to her own ports, in total ignorance of such an order. Our government was sensibly alive to the indignities and gross injustice thus wantonly heaped upon it; our moderation was wholly ineffectual, and we were driven to defensive measures, looking to an eventual open rupture. We created the nucleus of a standing army and augmented our navy; we authorized the capture of French armed vessels, and we declared the treaties with France no longer obligatory on our government or people. We captured several of her national vessels, and about eighty of her privateers; but war did not take place. Negotiation followed, and the convention of 1800 was the result. In the instructions to our envoys who negotiated that convention, (Messrs. Ellsworth, Davie, and Murray,) dated October 22, 1799, (*ib.*, Doc. 346, page 561,) after referring to the wrongs and indignities which we had suffered from France, it is said: "This conduct of the French republic would well have justified an immediate declaration of war on the part of the United States; but desirous of maintaining peace, and still willing to leave open the door of reconciliation with France, the United States contented themselves with preparations for defence, and measures calculated to protect their commerce." Such was the view of our government of the relations with France. The French government no less clearly exhibited its view of relations with the United States. A report made to the *tribunal* of France* upon the motives leading to the conclusion of said convention, dated December 4, 1801, runs thus:

"In consequence of this bill, [act of Congress of July 7, 1798, de-

* See "Code Diplomatique," July, 1802.

claring the treaties with France null,] the American government suspended the commercial relations of the United States with France, and gave to privateers permission to attack the armed vessels of the republic. The national frigates were ordered to seek them and to fight them. A French frigate and sloop-of-war, successively and unexpectedly attacked by the Americans, were obliged to yield to force; and the French flag—strange versatility of human affairs—was dragged, humiliated, before the same people who, a little while ago with eager shouts, had applauded its triumph. It was getting past recovery; war would have broken out between America and France if the directory, changing its system and following the counsels of prudence, had not opposed moderation to the unmeasured conduct of the President of the United States. * * * I have already, tribunes, told you that tne United States had declared the consular convention and the treaties of 1778 as null and void, and believed themselves freed from the obligations which they imposed upon them. The government of the republic, in spite of this act of Congress, did not regard the treaties as annulled, thinking that a treaty could only be abolished by the mutual consent of the two contracting parties, or by a declaration of war. But, on the one hand, France had not acceded to the dissolution of the treaties; on the other, there had not been any declaration of war. Commissions granted by the President to attack the armed vessels of France does not suffice to put America in a state of war; it requires a positive declaration of Congress to this effect. None has ever existed The republic was, therefore, justified in claiming the enjoyment of the stipulations comprehended in the old treaties, and indemnity for the non-execution of these stipulations."

Having thus disposed of matters relating specially to the *national* claims, it will be well to recur to the spoliation claims under consideration. The early captures of our merchant vessels resulted solely from necessity, and for these, and for all others then existing, the French government manifested every disposition to do us justice. Many of them were indemnified, in part or the whole, with some degree of promptitude, while others had special *arrêtés* or decrees passed for their relief, which still remain unexecuted on the French statute book; and all of them, up to the year 1795, had direct assurance of indemnity from the French government. The French minister of foreign affairs, in a letter of October 14, 1793, addressed to Mr. Monroe, our minister at Paris, (*ib.*, Doc. 35, p. 70,) says: "We hope that the government of the United States will attribute to their true cause the abuses of which you complain, as well as other violations of which our cruisers may render themselves guilty in the course of the present war. It must perceive how difficult it is to contain within just limits the indignation of our mariners, and, in general, of all the French patriots, against a people who speak the same language and having the same habits as the free Americans. The difficulty of distinguishing our allies from our enemies has often been the cause of offences committed on board your vessels. All that the administration could do is to order indemnification to those who have suffered, and to punish the guilty." And the President of the United States,

in a confidential message to Congress, on the 28th February, 1795, after referring to the claims of our citizens against France, said: "It affords me the highest pleasure to inform Congress that perfect harmony reigns between the two republics, and that those claims are in a train of being discussed with candor, and of being amicably adjusted."—(1 Ex. Journal, 175)

On the 8th November, 1797, the French government submitted to our envoys, Messrs. Pinckney, Marshall, and Gerry, the following propositions, (*ib* , Doc. 311, p. 467:) "2d. There shall be named a commission of five members, agreeably to a form to be established, for the purpose of deciding upon the reclamations of the Americans relative to the prizes made on them by the French privateers. 3d. The American envoys will engage that their government shall pay the indemnifications or the amount of the sums already decreed to the American creditors of the French republic, and those which shall be adjudged to the claimants by the commissioners. This payment shall be made under the name of an advance to the French government, who will repay it in a time and manner to be agreed on." This overture was declined by the American envoys, on the ground that England would regard it as a covert aid to France in the pending war between them.

The instructions to Messrs. Pinckney, Marshall, and Gerry, of July 15, 1797, (*ib.*, Doc. 307, p. 458,) enjoin on them to press France with earnestness to satisfy these claims, and not to renounce them. They are also authorized, in lieu of general succors under the guarantee, to stipulate for an annual war subsidy to France, not exceeding $200,000 per annum.

The instructions to Messrs. Ellsworth, Davie, and Murray, of October 22, 1799, (*ib.*, Doc. 346, p. 562,) contain the following emphatic injunction in relation to these claims: "1st. At the opening of the negotiation you will inform the French ministers that the United States expect from France, as an indispensable condition to the treaty, a stipulation to make to the citizens of the United States full compensation for all losses and damages which they have sustained by reason of irregular or illegal captures or condemnations of their vessels and other property, under color of authority or commissions from the French republic or its agents." "The following [7] points are to be considered as *ultimata:* 1st. That an article be inserted for establishing a board, with suitable powers, to hear and determine the claims of our citizens for the causes hereinbefore expressed, and binding France to pay or secure payment of the sums which shall be awarded."

In compliance with these instructions our envoys did, at the *first* opening of the negotiation, demand satisfaction for these claims.

Various propositions followed from both sides, all of which placed a provision for the full satisfaction of these claims in the foreground; so that the parties fully agreed that ample provision should be made for them, and on that point there was no difficulty. But our envoys having been instructed, as *ultimata*, not to recognize or renew the old treaties with France of 1778, in consequence of the act of Congress of July 7, 1798, which had declared them annulled; while, on the other hand, the French ministers insisted absolutely on their continuous obligation, and that an act of Congress could not annul a treaty, there

was found in these opposing positions, relative to *national* claims, a serious impediment to any further proceedings. To overcome this impediment, our envoys endeavored to purchase with large sums of money the onerous stipulations of the treaty of 1778, as a condition of their recognition; but the French ministers were inflexible in their demand of full and absolute recognition, to which our ministers yielded, and then pressed such modifications of the onerous articles for a money consideration as would relieve the United States from their more oppressive and dangerous original features. They offered, in lieu of the general guarantee of the French West Indies, an annual war subsidy of one million of livres, reserving the option to extinguish that article (guarantee) on the payment of a capital of five millions of livres; and they offered, further, three millions of livres for the reduction of the right to our ports and harbors for their ships of war, privateers, and prizes, from *exclusive* to that of *the most favored nation.*

The French ministers assented to the proposition relating to the guarantee article, provided the consideration be enlarged to double the sums which our ministers had offered; to which proviso our ministers agreed; but they refused peremptorily and definitely to *any* modification or consideration that could be named for the reduction of the use of our ports for their privateers and prizes during war, and especially during the war then existing between France and Great Britain; because, as they alleged, the cessation of the exclusive right by France would at once give that exclusive right to her, (England,) in virtue of Mr. Jay's treaty of November 19, 1794, which would be in effect a surrender of her flag to her enemy. This no pecuniary or other consideration would justify; and hence they would resign their commissions rather than entertain such proposition, if even so ordered by their government, which was impossible.

Our envoys, finding their efforts to obtain a modification of their treaties of 1778 of no avail, and that the continuance of the *quasi* war with France was exceedingly dangerous, proposed that the claims and rights of both parties should be recognized and referred to a subsequent negotiation, and that the future relations between the two governments should be defined in a new treaty. This was acceded to, and the respective rights and claims were consigned, by the 2d article of the convention of September 30, 1800, to future negotiation in the following words:

"ART. 2. The ministers plenipotentiary of the two parties not being able to agree, at present, respecting the treaty of alliance of 6th of February, 1778, the treaty of amity and commerce of the same date, and the convention of 14th of November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and, until they may have agreed upon these points, the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows."

The convention was ratified forthwith by the first consul of the French republic; and, on being laid before the Senate of the United

States, they advised the ratification, with the exception of the second article, which they struck out, and added a limitation of eight years.

The convention, so altered, was returned to the first consul, and he added to his ratification the following condition: "The government of the United States having added to its ratification that the convention shall be in force for the space of eight years, and having omitted the second article, the government of the French republic consents to accept, ratify, and confirm the above convention, with the addition importing that the convention shall be in force for the space of eight years, and with the retrenchment of the second article, provided that by this retrenchment the two states renounce the respective pretensions which are the object of the said article." And on that conditional ratification being laid before the Senate of the United States, they "resolved that they considered the said convention as fully ratified, and returned the same to the President for the usual promulgation."

A mutual set-off, or a mutual relinquishment of claims, is not an abandonment by either, but a payment by each to the other; and it cannot be pretended that claims of our citizens, which were admitted by both governments to be just and valid, could, by *any* act of policy and expediency to themselves, deprive such claims of their intrinsic justice and validity, or their proprietors to the just indemnification which both had freely and fully acknowledged to be their right. The United States might properly use the claims of its citizens temporarily for public purposes; but, in doing so, the government would necessarily stand in the room of France, the original obligor, and would, of course, come under the obligation imposed by the provision of the Constitution of the United States. These claims, in chief, had little or no connexion with the ancient treaties with France, from which we were so desirous to be released, because they were sustained by the *law of nations*. They would have been valid claims against France if such treaties had never been made. It cannot be disguised, that the object in connecting them with the negotiations for the exoneration of our government from the onerous stipulations of those treaties, was, not to save the claims, for they were saved and acknowledged by both parties already, but to provide a valuable counter claim against France, to be used, as it *was* most effectually used, to induce France to release our government from those treaties, and to furnish a valuable consideration for them, and for the large and various responsibilites under them, by purchase. Referring to the ratifications of the convention of 1800 by our Secretary of State, (Mr. Clay,) in his report to the President of 20th May, 1826, (Senate Docs 1st session, 19th Cong., vol. 5, p. 7,) he says: "The two contracting parties thus agreed, by the retrenchment of the second article, mutually to renounce the respective pretensions which were the object of that article. The pretensions of the United States, to which allusion is thus made, arose out of the spoliations, under color of French authority, in contravention to law and existing treaties. Those of France sprung from the treaty of alliance of the 6th February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th of November, 1788. Whatever obligations or indem-

nities from those sources either party had a right to demand, were respectively waived and abandoned; and the consideration which induced one party to renounce his pretensions was that of the renunciation by the other party of his pretensions. What was the value of the obligations and indemnities so reciprocally renounced can only be matter of speculation. The amount of the indemnities due to citizens of the United States was very large; and, on the other hand, the obligation was great (to specify no other French pretensions) under which the United States were placed in the 11th article of the treaty of alliance of 6th February, 1778, by which they were bound forever to guarantee from that time the then possessions of the crown of France in America, as well as those which it might acquire by the future treaty of peace with Great Britain; all these possessions having been, it is believed, conquered, at or not long after the exchange of the ratifications of the convention of September, 1800, by the arms of Great Britain, from France.

"The fifth article of the amendments to the Constitution provides, 'nor shall private property be taken for public use without just compensation.' If the indemnities to which the citizens of the United States were entitled for French spoliations prior to the 30th September, 1800, have been appropriated to absolve the United States from the fulfilment of an obligation which they had contracted, or from the payment of indemnities which they were bound to make to France, the Senate is most competent to determine how far such appropriation is a public use of private property within the spirit of the Constitution, and whether equitable considerations do not require some compensation to be made to the claimants."

By every known rule of law or justice, the spoliation claims were of equal value to the benefits which their application produced to the United States. No one will contend that France is not released from these claims by the act of the government of the United States. No one will contend that the government has failed to accomplish its object by their application to its use, and is not now in the full enjoyment of the invaluable public benefits thus obtained. No one will contend that any consideration other than these claims, produced such benefits. No one will contend that the suffering memorialists have ever received a dollar for this immense sacrifice of their property; and no one will deny, it is believed, if these things are true, that they ought to be compensated.

Although no ground remains for doubt of the high obligation on the United States to satisfy these claims upon the proof already adduced, justice requires some reference to a novel and imposing feature in the case which is not found in any other known class of claims. A circular letter from Mr. Jefferson, Secretary of State, dated August 27, 1793, addressed to the merchants of the United States, and neither recalled nor modified up to this day, contains the following—(*ib.*, Doc. 130, p. 217:)

"I have it in charge from the President (Washington) to assure the merchants of the United States concerned in foreign commerce and navigation that due attention will be paid to any injuries they may suffer on the high seas, or in foreign countries, contrary to the

law of nations, or to existing treaties; and that, on their forwarding hither well authenticated evidence of the same, proper proceedings will be adopted for their relief."

This pledge and overture were received and adopted by the claimants without reserve. They hastened their proofs of loss to the Department of State, which still holds the possession; and the faith of the government remains to be fulfilled by some adequate remuneration.

IN SENATE OF THE UNITED STATES, *December* 21, 1830.

Mr. LIVINGSTON, from the select committee appointed on the subject, made the following report:

The committee to whom was referred the petition of George F. Laroche and others, report:

That, referring to the report made at the last session of the Senate, for the statement of the case of the petitioners, they are of opinion that the relief pointed out for them in that report be granted to them, and for that purpose they beg leave to bring in a bill.

FEBRUARY 22, 1830.

The committee to whom was referred the petition of Francis R. Glavery and others, sufferers by French spoliations prior to the 30th September, 1800, *report:*

That the claims of this class of petitioners have so frequently been before Congress and the public as to render the details of this case in a great manner unnecessary; but the committee do not think that the duty assigned to them by the Senate would be properly performed by a mere reference to the several instructive reports that have been made on the subject, for the information of either branch of the legislature. They have thought that something further was expected by the reference; and as the collection of documents had been previously made by former committees, that it would be required from them to place in a condensed view before the Senate, as well the history as the merits of the claim, and the reasoning by which the committee arrive at the conclusion to which they have come—that it is one founded in justice, and, consequently, that those who make it are, according to true policy, entitled to relief.

The history of this claim runs back to the earliest period of our political existence as a nation; it grows out of the first act of our intercourse with foreign powers; and is interwoven with some of the most interesting events of our contest for independence, and the scarcely less arduous struggle to maintain our peace and neutrality, during the destructive warfare in which all Europe was soon after

involved; a war in which principles, before held sacred among civilized nations, were alternately disregarded by both the great parties to the contest.

One of our first objects, after the Declaration of Indepenence, was to strengthen our yet untried force by some foreign aid. The great and almost perpetual enemy of England naturally presented itself to our statesmen as the power with which our object could be most probably and most effectually obtained, and an agent was almost immediately appointed to discover the disposition of the French court towards us; and on finding it favorable, commissioners were sent with full power to negotiate, with instructions "that, should the proposals already made be insufficient to produce the proposed declaration of war, and the commissioners are convinced that it cannot be otherwise accomplished, they assure his Most Christian Majesty that such of the British West India islands as, in the course of the war, shall be reduced by the united force of France and the United States, shall be yielded in absolute property to his Most Christian Majesty; and the United States engage, on timely notice, to furnish at their expense, and deliver at some convenient port or ports in the United States, provisions for carrying on expeditions against the said islands, to the amount of two millions of dollars, and six frigates, mounting not less than twenty-four guns each, manned and fitted for sea; and to render any other assistance which may be in their power, as becomes good allies."

The result is matter of history, too well known to be enlarged upon. The treaties of alliance and commerce were entered into in the year 1778, and were followed by the consular convention, first planned by Congress in the year 1782, and sent out to Dr. Franklin, to be proposed to the French government; agreed to and signed in the year 1784; refused to be ratified by Congress, and re-modelled in the year 1788; and finally ratified by the President, with the advice and consent of the Senate, in July, 1789. But some of the articles of these compacts belong to the subject before us, and must therefore claim particular attention. The powerful aid of France could not reasonably be expected without some equivalent. The basis of the treaty of alliance, then, was not only a stipulation for mutual aid and exertion in the war which that treaty rendered inevitable between France and England, and which stipulations are contained in the first ten articles of the instrument, but by the 11th article, the United States guarantee FOREVER, against all other powers, to France, as well all the possessions it then had in America, as those it might acquire by the treaty of peace. France guarantiee to the United States their LIBERTY, SOVEREIGNTY and INDEPENDENCE, absolute and unlimited, as well in matters of government as commerce, and all their possessions, as well as those they might acquire by the war. And the *casus fœderis*, as explained in the 12th article, is made to depend, not upon the character of future war as to offensive or defensive, but "*in case of a rupture between France and England;*" and such a rupture was, by France, as confidently calculated to take place, as it was earnestly desired by the United States.

The rights and obligations of the two parties under this article need

no explanations to elucidate them; and if the aid of France was considered necessary for the preservation of that which she guarantied to us, our stipulation (supposing our power equally necessary to France) bore no proportion in importance to hers. Liberty, sovereignty, independence, political and commercial, all our vast possessions, in the one scale; the West India colonies in the other. If the relative importance of the objects guarantied to the respective parties to the contract was greatly disproportioned, the means of performing the engagement were not less so. On the one hand, the fleets, armies, and resources of a powerful long established kingdom; on the other, a people whose very political existence was yet a problem—without regular armies, without revenue, with an inefficient government newly and rudely organized, and with a few privateers for a fleet. There was also this essential difference in the value of the stipulations, that France could never expect anything from ours until she had completely performed hers. These features in the treaty of alliance are necessarily adverted to; they have a forcible bearing on the case.

On the same day a treaty of amity and commerce was signed between the two nations, the articles of which here necessary to notice are the 6th, 7th, 13th, 17th, 19th, 22d, 23d, 24th, 25th, 27th, and 28th. By them it was mutually stipulated that vessels-of-war belonging to the one power shall give convoy to, and defend and protect the merchantmen of, the other, going the same route, in the same manner as they ought to defend and protect their own; that free ships shall make free goods; that there shall be perfect liberty of commerce with an enemy's port, with all articles, excepting contraband; that articles of contraband shall be restricted to the list contained in the treaty; that the right of search shall consist only in an inspection of the ship's papers, the tenor of which is set forth in the treaty; that even in case of contraband articles being found, their forfeiture shall not affect the ship or the rest of the cargo; that such articles are not to be taken out before condemnation without consent. Ships-of-war and privateers of the one power, with their prizes, are to be received into the ports of the other, and allowed to depart without paying any duties; but no shelter is to be given to vessels of the enemy, having made prize of the property of such power, who shall be forced, if they come in by stress of weather, to depart as soon as possible. A ship or privateer of an enemy of one power shall not be permitted to refit in the ports of the other, nor to sell their prizes; and shall not even be permitted to take provisions, except what may be necessary to carry them to the next port of their own nation. By this treaty it is also provided that the functions of consuls shall be regulated by a particular agreement. This last stipulation was carried into effect by the consular convention above referred to, by which, in addition to the usual functions belonging to the consular office, exclusive jurisdiction was vested in the consuls over the vessels and crews of their nation in the United States; and arrangements were made on that subject which were found in practice to be extremely embarrassing.

With the mutual rights and obligations resulting from these stipulations the parties to them were found on the breaking out of the war of the French revolution. The most important of them—the guaran-

tee of our liberty, sovereignty, and independence—had been fulfilled in a manner that called forth, on numerous occasions, the warmest expressions of gratitude from the government of the United States; and that rendered the obligation to support them in future entirely nugatory. No occasion had yet presented itself to ask for the performance of our engagements, or to call upon France for a compliance with those which could only be required in a belligerent state on her part, and a neutral one on ours.

The occasion and the time had now arrived when the good faith of the two nations was to be put to the test. France became engaged in a war, waged against her on extraordinary principles, and conducted, in some respects, in a manner subversive of those by which civilized nations, in modern times, had considered themselves bound, both towards their enemies and others. The United States were no party to that war; they were entitled to expect the strict performance of the engagement which had been made in anticipation of such a state of things, and which their neutral position gave them, according to the laws of nations, a right to demand. But they had had obligations to fulfil, as well as rights to assert. The *casus fœderis* had arrived; the French American islands were threatened, and we had guarantied their possession to France. The good faith, and even enthusiastic zeal, with which, when our situations were reversed, when the independence which France had guarantied to us was in danger, her part of the compact had been performed, rendered the duty more obligatory upon us. The stipulations we had made for the admission of French public and private vessels of war into our ports, and for the exclusion of those of enemies, were also a cause of great and constantly recurring embarrassment. With the very first operations of the war began the mutual complaints of the two parties, for the neglect of their duties and the infraction of their rights. One of our first complaints arose out of a decree passed by the French government on the 9th of May, 1793, which authorized the seizure of neutral vessels bound to enemy's ports, &c., with a promise of indemnity. The preamble of this decree declares that its character is to be attributed to the enemies of France, who, having captured neutral vessels bound to her ports, "the French people are no longer permitted to fulfil, towards the neutral powers in general, the vows they have so often manifested, and which they constantly make, for the full and entire liberty of commerce and navigation."

By the 5th article of this decree, its operation was made retrospective to the date of the declaration of war, and prospective to the period when the enemies of France should cease the depredations of which it complained.

Early in the year 1794 we complained of an embargo, by which our vessels were detained at Bordeaux; of refusals to pay bills drawn for supplies; of British goods taken from our ships in violation of the treaty; of American property taken under pretext of its belonging to the English; of the imprisonment of American citizens taken on the high seas.

They complained of the President's proclamation (of neutrality) of the 22d of April, 1793, which they consider "*insidious;*" that we had

restored to the British owners sundry prizes made by certain French privateers, and excluded said privateers from the use of the ports of the United States; that shelter was given to English vessels-of-war in our ports, while they (the French) were not permitted to sell their prizes; that supplies of provisions, and other supplies for the West Indies, which we had agreed to guaranty, were refused; that the consular convention was not carried into effect; and that our seamen were captured or impressed by British vessels-of-war, and used in great numbers as auxiliaries in the reduction of the French colonies. In all these complaints neither of the parties seemed desirous of pressing the other for a strict performance of the treaty—both, perhaps, from a consciousness that they were, themselves, not inclined to perform all its stipulations; we, on our part, were cautious about asking indemnity for the breach of the articles which stipulated that free ships should make free goods, in the hope that the French would be equally accommodating on the subject of the guaranty; and it is curious to observe the embarrassment which this subject produced in the negotiations between the parties. In the instructions to Mr. Monroe he is directed to state that *we are unable to give her aid of men and money*, evidently alluding to the guaranty. A plea of inability could only flow from a consciousness of obligation, and must be regarded as an acknowledgment of liability on the part of the nation that makes it. And that minister, in one of his letters to the Secretary of State, says: "I felt extremely embarrassed how to touch again their infringement of the treaty of commerce; whether to call on them to execute it, or leave that question on the ground on which I first placed it." And afterwards, in a conference with one of the French ministers, the question is directly put: "Do you insist on our executing the treaty?" This, Mr. Monroe, for the moment, evades; but it was afterwards peremptorily again urged: "Do you insist upon or demand it?" And Mr. Monroe answers "that he was not instructed by the President to insist upon it, nor did he insist upon it;" and he avows that one of his motives was, "lest it might excite a disposition *to press us upon other points, on which it were better to avoid any discussion.*" On the part of the French government, although the execution of the guaranty seems to have been incidentally demanded by their agents in the United States, yet it was rather in the shape of a request of aid in money, provisions, and arms; and the reference made to the guaranty was to show that we might comply with their requisitions under the previous treaty without departing from our neutrality.

The mildness with which we were approached on this subject, however, resulted from the many and intentional indications given out by the Executive, of our unwillingness to do any act which should make us subject to become parties to the war. And, referring to this circumstance, the biographer of the then Chief Magistrate says: "Washington's proclamation of neutrality was a novelty in the political world. It was, however, the wisest measure, as adapted to the circumstances, that history records. It accomplished the purpose for which it was intended, and that purpose was one of the best and most salutary of which any nation had ever experienced the benefit. It was intended to prevent the French minister from demanding the

performance of the guarantee contained in the treaty of alliance, and it was admirably calculated to prepare the minds of the people for approving of the refusal which, if he made the demand, Washington was resolved to give him."

Soon after this proclamation was issued the French minister proposed to renew the treaties, and unite still closer the two nations in their stipulations of alliance; and he did not hesitate to make known, as part of his instructions, that the saving of the guarantee article, in any new treaty to be made with the United States, was an indispensable condition.

It was of the more importance to her, as she could direct her whole force to her European wars, and leave the United States at all times to protect her islands, or pay for them if we failed to save them. It was in this view of the subject that the President of the United States subsequently (July 15, 1797,) instructed his envoys to France, Messrs. Pinckney, Marshall, and Gerry, to stipulate with the French government to pay them an annual war subsidy of $200,000, in lieu of the guarantee article—the engagement to be prospective from the date of the proposed stipulation.

There is, indeed, some evidence that Mr. Genet, during his ministry, was instructed to make, and did make, a formal demand of the performance of the guarantee; for, on the 14th of November, 1794, he writes thus to Mr. Jefferson: "I beg of you to lay upon the President the *decree and the enclosed note*, and to obtain from him the earliest decision, either as to the *guaranty I have claimed the fulfillment of for our colonies*, or upon the mode of negotiation of the new treaty I was charged to propose to the United States, and which would make of the two nations but one family." Yet, as a few days after this, on the 2d December, the Secretary of State writes to Mr. Monroe, that France had *omitted* to demand the fulfillment of the guarantee, we must suppose that Mr. Genet's demand was not considered in that light by our government.

In this state things remained—each party fearful of pressing, lest it should in its turn be pressed by the other; and mutual forbearance produced the effect which moderation and prudence led to, in public as well as private affairs. The language of recrimination had nearly ceased, and everything seemed to promise a speedy and satisfactory accommodation. After some difficulty, Mr. Monroe, on the 10th November, 1794, obtained from the French government an arrêté, ordering an adjustment of the accounts of American citizens for the embargo at Bordeaux, for the supplies rendered to the government of St. Domingo, by which all the embarrassments of our direct commerce with France, and with other countries, so far as they had been created by that power, were done away. "In short," says Mr. Monroe, "all the objects to which my note of the 3d of September extended, were yielded, except that of allowing our vessels to protect enemies' goods;" which last point was yielded on the 3d January, 1795. And in a message to Congress of the 20th February following, the President says "it affords me the highest pleasure to inform Congress that perfect harmony reigns between the two republics, (France and the United

States,) and that those claims (of the American citizens) are in a train of being discussed with candor, and amicably adjusted."

During these discussions, which produced these prospects of amicable arrangement, the treaty between the United States and Great Britain had been negotiating. As was natural, it produced some jealousies and suspicions. But the solemn assurances which Mr. Monroe was instructed to make, that "the motives of Mr. Jay's mission were to obtain immediate compensation for our plundered property, and the restitution of the posts;" and that "he was positively forbidden to weaken the engagements between this country and France;" and the instruction he received, to "repel with firmness any imputation of the most distant intention to sacrifice our connexion with France to any connexion with England;" all these contributed to produce the effect which has been described. When the terms of that treaty came to be known, the face of affairs was immediately changed France complained that her interests were sacrificed by stipulations with her enemy, inconsistent with those we have made with her, in relation to the shelter to be given to ships of war; that we had enlarged, to her prejudice, the list of contraband, and even admitted that provisions might be such, at a time when her enemy was endeavoring to starve her. These, and other complaints, were urged with great acrimony. On our part, we asserted that the rights of France were reserved by an express article; and that, having done this, she had no right to complain of any treaty, which, as an independent nation, we had a right to make. The construction which Great Britain put on the treaty, by capturing all our vessels she could find carrying provisions to France, increased the irritation; while the payment, in case of capture, which we had stipulated for, gave it, in their minds, the appearance of a collusive contract to their prejudice. France also complained, and more seriously, of the new rules to which she was subjected in relation to her privateers and prizes, and which had their authority only in the British treaty of 1794.

From the following extract from a report made to the President by the Secretary of State, on the 15th of July, 1796, it appears that the restrictions we had laid upon French privateers and their prizes, were not the result of demand on the part of Great Britain, but our own voluntary construction of the stipulation made with her. "Mr. Adet asks whether the President has caused orders to be given to prevent the sale of prizes conducted into the ports of the United States by vessels of the republic, or by privateers armed under its authority." On this I have the honor to inform you, that the 24th article of the British treaty having explicitly forbidden the arming of privateers, and the selling of their prizes in the ports of the United States, the Secretary of the Treasury prepared, as a matter of course, circular letters to the collectors to conform to the restrictions contained in that article. This was the more necessary, as formerly the collectors had been instructed to "admit to an entry and sale of the prizes brought into our ports." This exclusion from our ports was the more severe against France, as it amounted to nearly an entire exclusion from the western hemisphere, since the French colonies had generally fallen into the possession of England.

It was alleged by France that while it was very important to her to secure ports of refuge and security for her ships-of-war, privateers, and prizes on or near the continent of America, principally for the protection of her sugar islands, yet, being anxious to throw her whole force into the scale of the United States, to obtain and secure their independence, she made their cause her sole object; but neither in this act, nor in the renunciation in favor of the United States of the Bermuda islands and the northern possessions of America, (should they be conquered,) did she lose sight of the protection of her valuable West India possessions. She has stipulated with the United States, in the treaty of commerce of 1778, for the use of their ports, for which they received an equivalent in the undivided aid of the French forces, and in the renunciation referred to. These charges produced recrimination, and a new era began in the political situation of the two countries, from which may be dated a large part of the claims on which the committee are directed to report.

At this period of the controversy Mr. Monroe states that the demands of the United States arose—

1. From the capture and detention of about fifty vessels.
2. The detention for a year of eighty other vessels under the Bordeaux embargo.
3. The non-payment of supplies to the West India islands and to continental France.
4. For depredations committed on our commerce in the West Indies.

These last seem to have begun a short time prior to that date.

The same moderation in language that had preceded it was no longer to be found in the diplomatic intercourse between the nations. France complained loudly that British ships-of-war, which had made prize of their vessels, were not only received in our ports, but that they made them a place of rendezvous, whence to destroy their commerce, in direct violation of our treaty. They added to this cause of complaint the repetition of others to which the committee have before alluded, and reinforced them by new allegations, perhaps not so well founded; and at length their minister, Mr. Adet, on the 15th of November, 1796, announces the order of his government to suspend his functions in the United States, and made a formal claim of the guarantee, in the following terms: "The undersigned, minister plenipotentiary of the French republic, now fulfills to the Secretary of State of the United States a painful but sacred duty. He claims, in the name of American honor, in the name of the faith of treaties, the execution of that contract which assured to the United States their existence, and which France regarded as the pledge of the most sacred union between two people, the freest on earth." Nor was this dissatisfaction confined to complaints and remonstrances. On the 7th July, 1796, the directory decreed that "the flag of the French republic will treat all neutrals, either as to confiscation as to searches or capture, in the same manner as they shall suffer the English to treat them." This was followed by a notification "that the directory consider the stipulations of the treaty of 1778 which concern the neutrality of the flags as altered and suspended in their most essential points by this act," (the treaty with Great Britain.)

In the same year the agents of the French government in the West Indies issued decrees authorizing the capture of American vessels bound to, and coming from, an English port, under which, in practice, all Americans, wherever bound, were indiscriminately captured or plundered; and these proceedings are thus characterized by our Secretary of State in a letter to Mr. Pinckney: "The spoliations on our commerce by French privateers are daily increasing in a manner to set every just principle at defiance." In the following year (March 2, 1797) another decree of the executive directory was passed, enlarging the list of contraband, declaring Americans in the service of England pirates, and authorizing the capture of all vessels of the United States unprovided with a document called the *role d'equipage*, which it was well known no American vessel ever carried. This decree was made to have immediate operation, evidently to take us by surprise, and its effect was so truly calculated that the ocean was swept of several hundreds of American vessels before intelligence of the enactment of the decress had reached the United States. In the month of January, 1798, all vessels having on board goods the production of England or any of its colonies were declared good prize. These decrees, and others of a similar character, readily and promptly executed, and even exceeded by the cupidity of the French cruisers, produced a state of things which could not long be submitted to. The United States at first attempted to put an end to it by negotiation. This was rendered nugatory, first by the refusal to receive Mr. Pinckney as the successor to Mr. Monroe, and afterwards by the same refusal, accompanied by very insulting circumstances, to the extraordinary mission composed of Messrs. Pinckney, Marshall, and Gerry. From this time affairs took a more serious turn. A number of legislative acts were passed evincive of the indignant feeling which the course of conduct pursued by the French government had produced, and showing a determination to resist them by force. Of these, the committee deem it necessary to the present investigation to notice only the following:

Act of 28th May, 1798, authorizing the capture by public vessels of the United States of "all armed vessels of the republic of France which have committed, or shall be found hovering on the coast of the United States for the purpose of committing depredations on the vessels belonging to the citizens thereof."

Act of 18th June, 1798, suspending intercourse with France, under penalty of the forfeiture of vessels carrying on such intercourse.

Act of 25th June, same year, authorizing American merchant vessels to oppose searches, &c., made by French vessels, to capture the aggressors, and to recapture American vessels taken by the French, but with proviso that, "whenever the government of France, and all persons acting by or under their authority, shall disavow, and shall cause the commanders and crews of all French armed vessels to refrain from the lawless depredations and outrages hitherto encouraged and authorized by that government against the merchant vessels of the United States, and shall cause the laws of nations to be observed by the said French armed vessels, the President of the United States is hereby authorized to instruct the commanders and crews of the merchant vessels of the United States to submit to any regular search by

the commanders or crews of French vessels, and to refrain from any force or capture to be exercised by virtue thereof."

The act of June 28, 1798, declaring the condemnation and sale of French vessels, taken in pursuance of the act of May 28.

The act of July 7, 1798, declaring for the reasons* recited in the preamble "That the United States are of right freed and exonerated from the stipulations of the treaties, and of the convention, heretofore concluded between the United States and France; and that the same shall not henceforth be regarded as legally obligatory on the government or the citizens of the United States."

The act of July 9, in the same year, authorizing the public vessels of the United States to capture all armed vessels of the republic of France on the high seas, and giving authority to the President to issue commissions for the like purpose to private armed vessels.

These several acts are here referred to merely as facts necessary to be considered in the history of the transactions between the two countries; their particular character and bearing upon the claim of the petitioners will be hereafter more properly considered. Their effect seems to have been important in bringing the government of France to more moderate and pacific counsels, some symptoms of which were tardily shown by a previous attempt to open a negotiation with Mr. Gerry. Advances were made, through our minister at the Hague, which ended in a second mission, composed of Messrs. Ellsworth, Davy, and Murray, who arrived in Paris on the 2d of March, 1800, and immediately began a negotiation which ended in the convention of September 30, 1800. The second and fifth articles only of this convention have a direct bearing on the claims of the petitioners. They are in the following words: "The ministers plenipotentiary of the two parties, not being able to agree, at present, respecting the treaty of alliance of February 6, 1778, the treaty of amity and commerce of the same date, and the convention of November 14, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and *until they* may have agreed on these points the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows:

"ARTICLE 5. The debts contracted by one of the two nations with individuals of the other, or by the individuals of one with the individuals of the other, shall be paid, or the payment may be prosecuted in the same manner as if there had been no misunderstanding between the two states. But this clause shall not extend to indemnities claimed on account of captures or confiscations."

The 2d article was a temporary expedient to restore the two countries to a state of mutual intercourse, from the interruption of which both had experienced great inconvenience. By it the claims of both countries were acknowledged, and the governments respectively bound to negotiate further upon them at a future period—ours for indemnity to our citizens for depredations on their commerce and injury to their persons, theirs for the non-execution of the treaties of alliance and

* None of these reasons is that there is a state of war.

commerce and the breach of the consular convention. This treaty, soon after its date, was ratified by the First Consul; but the further negotiation provided for by the 2d article on these important points was defeated by a subsequent occurrence. The convention, duly ratified by the French government, was transmitted to the President, and by him submitted to the Senate, who advised its ratification with the exception of the 2d article, and a limitation of its duration to the term of eight years. With these alterations the treaty was returned and again submitted to the French government, which, after some delay and much deliberation, ratified the convention, with these alterations, adding on their part this proviso: "*Provided, that, by this retrenchment, the two states renounce the respective pretensions which are the subject of the said article.*" The convention, with this modification, was again submitted to the Senate, who, on the 19th of December, 1801, resolved, two-thirds concurring, that they consider the said convention as fully ratified; and they returned the same to the President for promulgation, who proclaimed it in the usual form.

It is on these proceedings that the petitioners found their claim; their reasoning is this, and it seems to bring the merits of their case within a very narrow compass:

As citizens of the United States we had rights which France, as a friendly power, was bound by the law of nations to respect. We had other rights which were secured to us by a positive compact between France and the United States. These rights, of both descriptions, having been violated by the former power greatly to our pecuniary injury, our first application was to the justice of the aggressors. Finding this unavailing we complained to our natural and sworn protectors, the government of the United States, who promptly volunteered its agency for the recovery of indemnification. The claimants were notified, by a circular letter from the Secretary of State dated August 27, 1793, "that due attention will be paid to any injuries they may sustain on the high seas or in foreign countries contrary to the law of nations or to existing treaties, and that on their forwarding hither well authenticated evidence of the same proper proceedings will be adopted for their relief;" and, in pursuance of said invitation, the sufferers generally forwarded evidence of the losses to the Department of State. The United States urged the justice of our claims, which was not denied by France. But that government had counter claims, not against us, the injured claimants, either collectively or individually, but against the whole nation of which we are a part—counter claims, not urged as representing French citizens for individual injuries, but national claims of indemnity for alleged breaches of national engagements, and involving a right to call for the future performance of onerous engagements. Pressed by the fears of being called on for the execution of those engagements, and for the losses incurred by France by reason of their past inexecution, our government not only failed in making that firm and vigorous demand of justice that, under other circumstances, they would have made, but bartered the indemnity that was due to us for their own exoneration from dangerous and inconvenient engagements. As our attorneys they gave a release of our private claims in consideration of a similar

release of their national stipulations; they purchased a great public advantage at our expense. We are not disposed to contest the right which has been exercised; but we invoke the eternal principles of justice, enforced as they are by a constitutional provision, when we allege that private property shall not be taken for public use without full indemnity.

Although your committee cannot but feel the full force of this appeal to the justice of the country, yet, as it has frequently been made in vain, they deem it a duty briefly to examine the reasons which, at different times, have been urged against the allowance of the claim. Among these, they do not recollect that the justice of the claim against France has ever been denied. Should a doubt, however, on that ground, suggest itself to any member of the Senate, it will be removed by the slightest attention to the acts of our government, legislative, executive, and diplomatic. The laws, which have before been referred to; the orders given by the President to carry them into effect; and at earlier as well as subsequent periods, the instructions to our ministers, and their correspondence, all prove that the wrongs inflicted on the petitioners were of the most grievous kind. A single reference will be sufficient on this point. It is to a report made by the Secretary of State, respecting depredations on the commerce of the United States, dated 21st June, 1797, and published, page 407 of the documents sent to Congress on the 20th May, 1826. After enumerating the several injurious decrees passed by the French government, he says: "Besides these several decrees, and others, which, being more limited, the former have superseded, the old marine ordinances of France have been revived and enforced with severity, both in Europe and the West Indies. The want of, or informality in, a bill of lading; the want of a certified list of the passengers and crew; the supercargo being by birth a foreigner, although a naturalized citizen of the United States; the destruction of a paper of any kind soever, and the want of a sea letter, have been deemed sufficient to warrant a condemnation of American property, although the proofs of the property were indubitable. The West Indies, as before remarked, have exhibited the most lamentable scenes of depredation, &c. The persons of our citizens have been beaten, insulted, and cruelly imprisoned. American property, going to, or coming from, neutral or even French ports, has been seized; it has even been forcibly taken when in their own ports, without any other excuse than that they wanted it." To deny the justice of claims for indemnity for such excesses, would be the assertion of a right, on the part of France, to indiscriminate plunder of neutral property. The claim then existed against France, whether acknowledged by that power or not, cannot, in the view the committee take of the case, be material; if founded on justice, we are bound to suppose that, at some time or other, it would be allowed. Nations must not, in their intercourse with each other, be supposed capable of flagrant injustice. Such a principle would soon break all those ties by which modern civilization has united them. If the French government at that period had denied the justice of these claims, and asserted a right to make the depredation, it would not have lessened the justice and validity of the claim-

ants' right against the successors in power of those who were so regardless of the laws of nations and the faith of treaties; and, at this moment, but for the act of their own government, they might appeal from the wrongs inflicted by republican France, to the justice and magnanimity of its monarchical ruler. But the justice of the claim was not denied; and the necessity of providing indemnity was expressly acknowledged. Of this there is the fullest evidence. By an arrêt of the 18th November, 1794, the Commissioner of the Marine is ordered to adjust the accounts of American citizens for the embargo at Bordeaux; and the injustice of all the preceding decrees against our commerce is virtually acknowledged by their unconditional repeal. Under this decree, indemnity was made for sundry American claims arising out of the Bordeaux embargo, contracts, &c.; and the residue of claims of that description were, with some exceptions, compensated out of the fund provided by the convention of April 30, 1803, between the United States and France. Even when Messrs. Pinckney, Marshall, and Gerry, were in Paris, in the informal negotiations carried on there, the justice of the claims was admitted, and a commission proposed to be established to liquidate the amount to be paid by the United States as a loan to France.—(See exhibit A, in the despatch of the envoys of November 8, 1797.) In all the subsequent negotiations, these claims for spoliations were admitted to be valid; and, finally, in the 2d article of the convention, are spoken of as *indemnities due*. We have also the authority of our government for this assertion. Mr. Madison, in a letter to Mr. Pinckney, dated February 6, 1804, says expressly: "The claims from which France was released were *admitted by France*;" so that the claims rest, not only on their intrinsic justice, but on the express admission of it by the party concerned.

How far the obligation of a government to enforce the just claims of its citizens against a foreign power extends, has, it is understood, been sometimes discussed, in considering the case of these petitioners; but it is believed that there is no connexion between that principle and this case. The demand for indemnity does not rest on any failure on the part of the government to assert the rights of the claimants, but on its appropriation of them to its own use.

The objection most frequently urged, and which, therefore, received the greatest attention from the committee, is, that the depredations on which the claims are founded were the cause of a war with the nation which had committed them; and that, this last argument of nations having failed to produce its effect, the treaty, which put an end to the war, also cancelled the claims which were the cause of it.

Admitting the two positions, that a nation is not obliged to go to war to enforce the claims of its citizens against a foreign power, and that, if it should resort to that measure, a treaty of peace, not containing any provision for the allowance of such claims, would not give to the individuals a right to claim indemnity from their own government; admitting both these positions, the committee cannot see how either of them bear upon the case.

National claims for indemnity may be reasonably supposed to be abandoned by a treaty of peace which makes no provision for them,

bucause such treaty is considered as an adjustment of all national difference; and where a refusal to compensate injuries to individuals is the ostensible cause of the war, it is made a national claim, and would, in like manner, be extinguished by a peace, and no right would result to the injured party against his own government for indemnity. But if, in an uncontroverted case of war, the government which had offered the injury should, by the treaty of peace, acknowledge the right of the individual to an indemnity, and his own government should release it in consideration of some advantage given to it in the treaty, surely there could be no doubt that the individual whose rights were thus bartered would be entitled to compensation.

But this was not a case of war, and the stipulations which reconciled the two nations was not a treaty of peace; it was a convention for putting an end to certain differences, &c. The proof of these assertions will be evident to any one who pays the slightest attention to the history of the transaction.

The first public expression of the light in which our government considered the measures which have been detailed is in the instructions given to Messrs. Ellsworth, Davy, and Murray, in which the envoys are told, after an enumeration of the wrongs sustained by the acts of the French government, "this conduct of the French republic would well have justified an immediate *declaration of war* on the part of the United States; but, desirous of *maintaining peace*, and still willing to leave open the door of reconciliation with France, the United States contented themselves with preparing for defence, and *measures calculated to defend her commerce.*" Now, all the measures which have been considered as equivalent to a state of war had been taken previous to the date of these instructions. Our government then did not think the two nations in a state of war; and, in conformity with these instructions, the ministers, in one of their first communications in the negotiation, thus characterize the measures taken by the United States: "With respect to the acts of the Congress of the United States, which the hard alternative of abandoning their commerce to ruin imposed, and which, far from contemplating a cooperation with the enemies of the republic, *did not even authorize reprisals* on their merchantmen, but were *restricted solely to the giving safety to their own* till a moment should arrive when their sufferings could be heard and redressed."

The same character is impressed on the whole negotiation—the settlement of indemnities for mutual injuries, and the modification of the ancient treaties to suit existing circumstances. Nowhere the slightest expression on either side that a state of war existed, which would exonerate either party from the obligation of making those indemnities to the other. On the contrary, when it became necessary to urge that those treaties were no longer obligatory on the United States, the ministers rely not on a state of war, which would have put an end to them without any dispute, but on the act of Congress of the 7th July, 1798, annulling the treaties, an act which they themselves did not think, in a subsequent part of the negotiation, any bar to a recognition of the treaties so as to limit the operation of an inter-

mediate one made with England. The convention which was the result of these negotiations is not only, in its form, different from a treaty of peace, but it contains stipulations which would be disgraceful to our country on the supposition that it terminated a state of war, the restoration of prizes, and payment for vessels destroyed. Neither party considered then that they were in a state of war. Were they so in effect? War, from its nature, is indiscriminate hostility between the subjects of the belligerent powers. Hence it is universally acknowledged that the granting of letters of marque and reprisal does not produce a state of war, because it is limited. Here recourse was not even had to this measure; the right of capture was limited to that of armed vessels, which were dangerous to our commerce, looking to security for the future, but not to indemnity for the past. Besides, the convention was not a treaty of peace, because such a treaty is without limitation; while the convention, being limited to eight years, would, if we had been at war, have been a truce only for that period, at the expiration of which war must have been resumed, as of course, or been followed by a regular treaty of peace. The committee will not swell their report by references to authorities which support these principles which they hold to be generally acknowledged.

Suggestions also have been made invalidating these claims on the ground that they were not made the equivalent for the release of the obligations incurred by the United States under the treaties with France, all of these obligations being already destroyed by the act of Congress of 7th July, 1798, and one of them for the guarantee of the islands never having been incurred, because the war on the part of France was an offensive, not a defensive war, and that, therefore, the *casus fœderis* had never occurred.

On the first ground, it will be sufficient to observe that a treaty being an agreement between two or more parties, no one of them can exonerate himself from its obligation by his own act. On the second, that the fact is for the argument worse than doubtful, and that, if it were well established, the public law is by no means clear; and that one or all of these reasons operated on our envoys to propose a sum of money as a consideration for exonerating us from the obligation of their treaties, thus supposed by the argument to be annulled.

Those who urge such objections overlook the essential fact, not only that nearly all the claims originated prior to the date of the annulling act of Congress of the 7th July, 1798, but that they were generally valid claims against France under the general provisions of international law, and, therefore, derived little or no aid from treaty stipulations. It was for this reason that the French government refused to ratify the convention of 1800, with our unconditional omission of the second article, since they would thereby have lost their claims to treaties, and left themselves still responsible for the claims under consideration in virtue of international law.

That the final result of the negotiation was the abandonment of the private claims as a consideration for exonerating the United States from the national obligations imposed by the treaties and conventions with France, is abundantly obvious. These were the only

objects of the second article. These had been, from the beginning to the end of the negotiation, the two objects of counter claim. The difficulty of adjusting them led to the expedient, provided by that article, of adjourning the discussion. It was declared by one party, and solemnly acknowledged by the other, that they were mutually released; and, finally, it has been repeatedly stated by the agents of our government, that the one was given up as an equivalent for the other. Mr. Madison, in his letter to Mr. Pinckney, before referred to, says, expressly: "The claims from which France was released were admitted by France, and the release was for a valuable consideration in a correspondent release of the United States from certain claims on them;" and before the convention was ratified, Mr. Livingston, our minister in France, writes: "France is greatly interested in our guarantee of their islands, particularly since the changes that have taken place there. I do not, therefore, wonder at the delay of the ratification, nor should I be surprised if she consents to purchase it by the restoration of the captured vessels." These proofs might be greatly multiplied, but the committee think it is sufficiently shown that the claim for indemnities was surrendered as an equivalent for the discharge of the United States from its heavy national obligations, and for the damages that were due for their preceding non-performance of them. If so, can there be a doubt, independent of the constitutional provision, that the sufferers are entitled to indemnity? Under that provision, is not this right converted into one that we are under the most solemn obligation to satisfy?

The only remaining inquiry is the amount, and on this point the committee have had some difficulty. Two modes of measuring the compensation suggested themselves:

1. The actual loss sustained by the petitioners;

2. The value of the advantages received as the consideration by the United States.

The first is the one demanded by strict justice; and is the only one that satisfies the word used by the Constitution, which requires "just compensation," which cannot be said to have been made when anything less than the full value is given. But there were difficulties which appeared insurmountable, to the adoption of this rule at the present day, arising from the multiplicity of the claims, the nature of the depredations which occasioned them, the loss of documents, either by the lapse of time, or the willful destruction of them by the depredators. The committee, therefore, could not undertake to provide a specific relief for each of the petitioners. But they have recommended the institution of a board, to enter into the investigation and apportion a sum which the committee have recommended to be appropriated, *pro rata*, among the several claimants.

The committee could not believe that the amount of compensation to the sufferers should be calculated by the advantages secured to the United States, because it was not according to their ideas the true measure. If the property of an individual be taken for public use, and the government miscalculate, and find that the object to which they have applied it has been injurious rather than beneficial, the value of the property is still due to the owner, who ought not to suffer for the

false speculations which have been made. A turnpike or canal may be very unproductive, but the owner of the land which has been taken for its construction is not the less entitled to its value. On the other hand, he can have no manner of right to more than the value of his property, be the object to which it has been applied ever so beneficial. In the present case, the committee are of opinion that it would drain the treasury were they to give the petitioners the value of obligations which the sacrifice of their property purchased.

The committee are led to believe that a less appropriation than five millions of dollars would be doing very inadequate justice to the claimants; they, therefore, recommend the insertion of that sum in the bill which they pray leave to bring in for the relief of the petitioners.

To lessen the public expenditure is a great legislative duty; to lessen it at the expense of justice, public faith, and constitutional right, would be a crime. Conceiving that all these require that relief should be granted to the petitioners, they pray leave to bring in a bill for that purpose.

A BILL to provide for the satisfaction of claims due to certain American citizens, for spoliations committed on their commerce prior to the year eighteen hundred.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That satisfaction shall be made, to an amount not exceeding five millions of dollars, to such citizens of the United States, or to their legal representatives, as had valid claims to indemnity upon the French government, arising out of illegal captures, detentions, forcible seizures, and confiscations, made or committed before the thirtieth day of September, eighteen hundred: *Provided*, That the provisions of this act shall not be extended to such claims as are described in the convention concluded at Paris on the thirtieth day of April, eighteen hundred and three, between the United States and the First Consul of the French republic, nor to such claims as are described in the treaty between the United States and Spain, concluded at Washington on the twenty-second day of February, eighteen hundred and nineteen, and for the liquidation and payment whereof provision is made in the said convention, or in said treaty.

SEC. 2. *And be it further enacted*, That, for the purpose of carrying into effect the provisions of this act, and to ascertain the full amount and validity of said claims, three commissioners shall be appointed by the President, by and with the advice and consent of the Senate, who shall meet at the city of Washington, and, within the space of years from the time of their first meeting, shall receive, examine, and decide upon the amount and validity of all the claims included within the description above mentioned. The said commissioners shall take an oath or affirmation, to be entered on the record of their proceedings, for the faithful and diligent performance of their duties; and in case of the death, sickness, or necessary absence of any such commissioner, his place may be supplied by appointment as aforesaid, or

by the President during the recess of the Senate, of another commissioner in his stead. The said commissioner shall be authorized to hear and examine, on oath or affirmation, every question relative to the said claim, and to receive all suitable authentic testimony concerning the same; and the rules for the decision of said commissioners shall be the principle of justice, the law of nations, and the former treaties between the United States and France, to wit, the treaty of amity and commerce of the sixth of February, seventeen hundred and seventy-eight, the treaty of alliance of the same date, and the consular convention of the fourteenth of November, seventeen hundred and eighty-eight.

SEC. 3. *And be it further enacted*, That the payment of such claims as may be admitted and adjusted by the said commissioners, to an amount not exceeding five millions of dollars, shall be made *pro rata*, in such manner as the President of the United States shall prescribe.

SEC. 4. *And be it further enacted*, That the records of the proceedings of said commissioners, and the documents produced before them, shall, after the commission is closed, be deposited in the Department of State.

SEC. 5. *And be it further enacted*, That the President of the United States is hereby authorized to take any measure which he may deem expedient for organizing the said board of commissioners, and for this purpose appoint a secretary well versed in the French and Spanish languages, and a clerk; which appointments, if made during the recess of the Senate, shall, at the next meeting of that body, be subject to nomination, for their advice and consent.

SEC. 6. *And be it further enacted*, That the compensation of the respective officers for whose appointment provision is made by this act, shall not exceed the following sums:

To each commissioner, at the rate, by the year, of

To the secretary of the board, at the rate, by the year, of

To the clerk, at the rate, by the year, of

SEC. 7. *And be it further enacted*, That, during the continuance of said commission, all documents and communications, having relation to said claims, which shall be addressed to or from the said secretary, shall be free from postage.

SEC. 8. *And be it further enacted*, That, for carrying this act into execution, the sum of dollars be, and hereby is, appropriated, to be taken from any money in the treasury not otherwise appropriated.

FRENCH SPOLIATIONS.

The following is President Polk's veto on the French spoliation bill:

To the Senate of the United States:

I return to the Senate, in which it originated, the bill entitled "An act to provide for the ascertainment and satisfaction of claims of American citizens for spoliations committed by the French prior to the

31st day of July, 1801," which was presented to me on the 6th inst., with my objections to its becoming a law.

In attempting to give the bill the careful examination it requires, difficulties presented themselves in the outset from the remoteness of the period to which the claims belong, the complicated nature of the transactions in which they originated, and the protracted negotiations to which they led between France and the United States. The short time intervening between the passage of the bill by Congress and the approaching close of their session, as well as the pressure of other official duties, have not permitted me to extend my examination of the subject into its minute details. But in the consideration which I have been able to give to it, I find objections of a grave character to its provisions.

For the satisfaction of the claims provided for by the bill, it is proposed to appropriate five millions of dollars. I can perceive no legal or equitable ground upon which this large appropriation can rest. A portion of the claims has been more than half a century before the government, in its executive or legislative departments, and all of them had their origin in events which occurred prior to the year 1800. Since 1802 they have been from time to time before Congress. No greater necessity or propriety exists for providing for these claims at this time than has existed for near half a century; during all which this questionable measure has never until now received the favorable consideration of Congress. It is scarcely probable, if the claim had been regarded as obligatory upon the government, or constituting an equitable demand upon the treasury, that those who were contemporaneous with the events which gave rise to it, should not long since have done justice to the claimants. The treasury has often been in a condition to enable the government to do so without inconvenience, if these claims had been considered just. Mr. Jefferson, who was fully cognizant of the early dissensions between the governments of the United States and France, out of which the claims arose, in his annual message in 1808 adverted to the large surplus then in the treasury, and its "probable accumulation," and inquired whether it should lie "unproductive in the public vaults;" and yet these claims, though then before Congress, were not recognized or paid. Since that, the public debt of the revolution and of the war 1812 has been extinguished, and at several periods since, the treasury has been in possession of large surpluses over the demands upon it. In 1836 the surplus amounted to many millions of dollars, and for want of proper objects to which to apply it, it was directed by Congress to be deposited with the States.

During this extended course of time, embracing periods eminently favorable for satisfying all just demands upon the government, the claims embraced in this bill met with no favor in Congress, beyond reports of committees, in one or the other branch. These circumstances alone are calculated to raise strong doubts in respect to these claims, especially as all the information necessary to a correct judgment concerning them, has been long before the public. These doubts are strengthened in my mind by the examination I have been enabled to give to the transactions in which they originated.

The bill assumes that the United States have become liable in these ancient transactions to make reparation to the claimants for injuries committed by France. Nothing was obtained for the claimants by negotiation; and the bill assumes that the government has become responsible to them for the aggressions of France. The limited time allotted me, before your adjournment, precludes the possibility of reiterating the facts and arguments by which, in preceding Congresses, these claims have been successfully resisted. The present is a period peculiarly unfavorable for the satisfaction of claims of so large an amount, and, to say the least of them, of so doubtful a character. There is no surplus in the treasury. A public debt of several millions of dollars has been created with the last few years. We are engaged in a foreign war, uncertain in its duration, and involving heavy expenditures; to prosecute which Congress has, at its present session, authorized a further loan. So that in effect the government, should this bill become a law, borrows money and increases the public debt to pay these claims. It is true, that by the provisions of the bill payment is directed to be made in land scrip instead of money, but the effect upon the treasury will be the same. The public lands constitute one of the sources of public revenue, and if these claims be paid in land scrip, it will, from the date of its issue, to a great extent, cut off from the treasury the annual income from the sales of the public lands; because payments for the lands sold by the government may be expected to be made in scrip until it is all redeemed. If these claims be just they ought to be paid in money, and not in anything made less valuable. The bill provides that they shall be paid in land scrip, whereby they are in effect to be a mortgage upon the public lands in the new States, a mortgage, too, held in great part, if not wholly, by non-residents of the States in which the lands lie, who may secure these lands to the amount of reveral millions of acres, and then demand for them exorbitant prices from the citizens of the States who may desire to purchase them for settlement, or they may keep them out of the market, and thus retard the prosperity and growth of the States in which they are situated. Why this unusual mode of satisfying demands on the treasury has been resorted to, does not appear. It is not consistent with a sound public policy. If it be done in this case, it may be done in all others. It would form a precedent for the satisfaction of all other stale and questionable claims in the same manner, and would undoubtedly be resorted to by all claimants, who, after successive trials, shall fail to have their claims recognized and paid in money by Congress.

This bill proposes to appropriate five millions of dollars, to be paid in land scrip, and provides "that no claim or memorial shall be received by the commissioners" authorized by the act, "unless accompanied by a release or discharge of the United States from all other and further compensation than the claimant may be entitled to receive under the provisions of this act." These claims are estimated to amount to a much larger sum than five millions of dollars; and yet the claimant is required to release to the government all other compensation, and to accept his share of a fund which is known to be inadequate.

If these claims be well founded, it would be unjust to the claimants to repudiate any portion of them, and the payment of the remaining sum could not be hereafter resisted. This bill proposes to pay these claims, not in the currency known to the Constitution, and not to their full amount.

Passed, as this bill has been, near the close of the session, and when many measures of importance necessarily claim the attention of Congress, and possibly without that full and deliberate consideration which the large sum it appropriates, and the existing condition of the treasury and of the country demand, I deem it to be my duty to withhold my approval, that it may hereafter undergo the revision of Congress. I have come to this conclusion with regret. In interposing my objections to its becoming a law, I am truly sensible that it should be an extreme case which would make it the duty of the Executive to withhold his approval of any bill passed by Congress upon the ground of its inexpediency alone. Such a case I consider this to be.

JAMES K. POLK.

WASHINGTON, *August* 8, 1846.

Special message of President Pierce, to the House of Representatives of the United States, transmitting his objections to the bill to provide for the ascertainment and satisfaction of claims of American citizens for spoliations committed by the French prior to the thirty-first day of July, one thousand eight hundred and one. February 17, 1855.

To the House of Representatives:

I have received and carefully considered the bill entitled "An act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the thirty-first of July, one thousand eight hundred and one," and in the discharge of a duty imperatively enjoined on me by the Constitution, I return the same with my objections, to the House of Representatives, in which it originated.

In the organization of the government of the United States, the legislative and executive functions were separated, and placed in distinct hands. Although the President is required, from time to time, to recommend to the consideration of Congress such measures as he shall judge necessary and expedient, his participation in the formal business of legislation is limited to the single duty, in a certain contingency, of demanding for a bill a particular form of vote, prescribed by the Constitution, before it can become a law. He is not invested with power to defeat legislation by an absolute veto, but only to restrain it, and is charged with the duty, in case he disapproves a measure, of invoking a second, and a more deliberate and solemn consideration of it on the part of Congress. It is not incumbent on the President to sign a bill as a matter of course, and thus merely to authenticate the action of Congress, for he must exercise intelligent judgment, or be faithless to the trust reposed in him. If he approve a bill he shall sign it; but if not, he shall return it, with his objections, to that House

in which it shall have originated, for such further action as the Constitution demands, which is its enactment, if at all, not by a bare numerical majority as in the first instance, but by a constitutional majority of two-thirds of both Houses.

While the Constitution thus confers on the legislative bodies the complete power of legislation in all cases, it proceeds, in the spirit of justice, to provide for the protection of the responsibility of the President. It does not compel him to affix the signature of approval to any bill unless it actually have his approbation; for, while it requires him to sign if he approve, it, in my judgment, imposes upon him the duty of withholding his signature if he do not approve. In the execution of his official duty in this respect he is not to perform a mere mechanical part, but is to decide and act according to conscientious convictions of the rightfulness or the wrongfulness of the proposed law. In a matter as to which he is doubtful in his own mind, he may well defer to the majority of the two Houses. Individual members of the respective Houses, owing to the nature, variety, and amount of business pending, must necessarily rely, for their guidance in many, perhaps most cases, when the matters involved are not of popular interest, upon the investigation of appropriate committees, or, it may be, that of a single member, whose attention has been particularly directed to the subject. For similar reasons, but even to a greater extent, from the number and variety of subjects daily urged upon his attention, the President naturally relies much upon the investigation had, and the results arrived at, by the two Houses; and hence those results, in large classes of cases, constitute the basis upon which his approval rests. The President's responsibility is to the whole people of the United States; as that of a senator is to the people of a particular State, that of a representative to the people of a State or district; and it may be safely assumed that he will not resort to the clearly-defined and limited power of arresting legislation, and calling for reconsideration of any measure, except in obedience to requirements of duty. When, however, he entertains a decisive and fixed conclusion, not merely of the unconstitutionality, but of the impropriety, or injustice in other respects, of any measure, if he declare that he approves it he is false to his oath, and he deliberately disregards his constitutional obligations.

I cheerfully recognize the weight of authority which attaches to the action of a majority of the two Houses. But in this case, as in some others, the framers of our Constitution, for wise considerations of public good, provided that nothing less than a two-thirds vote of one or both of the Houses of Congress shall become effective to bind the co-ordinate departments of the government, the people and the several States. If there be anything of seeming invidiousness in the official right thus conferred on the President, it is in appearance only, for the same right of approving or disapproving a bill, according to each one's own judgment, is conferred on every member of the Senate and of the House of Representatives.

It is apparent, therefore, that the circumstances must be extraordinary, which would induce the President to withhold approval from a bill involving no violation of the Constitution. The amount of the

claims proposed to be discharged by the bill before me, the nature of the transactions in which those claims are alleged to have originated, the length of time during which they have occupied the attention of Congress and the country, present such an exigency. Their history renders it impossible that a President, who has participated to any considerable degree in public affairs, could have failed to form respecting them a decided opinion, upon what he would deem satisfactory grounds. Nevertheless, instead of resting on former opinions, it has seemed to me proper to review and more carefully examine the whole subject, so as satisfactorily to determine the nature and extent of my obligations in the premises.

I feel called upon at the threshold to notice an assertion, often repeated, that the refusal of the United States to satisfy these claims, in the manner provided by the present bill, rests as a stain on the justice of our country. If it be so, the imputation on the public honor is aggravated by the consideration that the claims are coeval with the present century, and it has been a persistent wrong during that whole period of time. The allegation is, that private property has been taken for public use without just compensation, in violation of express provision of the Constitution; and that reparation has been withheld, and justice denied, until the injured parties have for the most part descended to the grave. But it is not to be forgotten or overlooked that those who represented the people, in different capacities, at the time when the alleged obligations were incurred, and to whom the charge of injustice attaches in the first instance, have also passed away, and borne with them the special information which controlled their decision, and, it may be well presumed, constituted the justification of their acts.

If, however, the charge in question be well founded, although its admission would inscribe on our history a page which we might desire most of all to obliterate, and although, if true, it must painfully disturb our confidence in the justice and the high sense of moral and political responsibility of those whose memories we have been taught to cherish with so much reverence and respect, still we have only one course of action left to us; and that is, to make the most prompt and ample reparation in our power, and consign the wrong, as far as may be, to forgetfulness.

But no such heavy sentence of condemnation should be lightly passed upon the sagacious and patriotic men, who participated in the transactions out of which these claims are supposed to have arisen, and who, from their ample means of knowledge of the general subject in its minute details, and from their official position, are peculiarly responsible for whatever there is of wrong or injustice in the decisions of the government.

Their justification consists in that which constitutes the objection to the present bill, namely, the absence of any indebtedness on the part of the United States. The charge of denial of justice in this case, and consequent stain upon our national character, has not yet been endorsed by the American people But, if it were otherwise, this bill, so far from relieving the past, would only stamp on the present a more deep and indelible stigma. It admits the justice of

the claims, concedes that payment has been wrongfully withheld for fifty years, and then proposes not to pay them, but to compound with the public creditors, by providing that, whether the claims shall be presented or not, whether the sum appropriated shall pay much or little of what shall be found due, the law itself shall constitute a perpetual bar to all future demands. This is not, in my judgment, the way to atone for wrongs, if they exist, nor to meet subsisting obligations.

If new facts, not known or not accessible during the administration of Mr. Jefferson, Mr. Madison, or Mr. Monroe, had since been brought to light, or new sources of information discovered, this would greatly relieve the subject of embarrassment. But nothing of this nature has occurred.

That those eminent statesmen had the best means of arriving at a correct conclusion, no one will deny. That they never recognized the alleged obligation on the part of the government is shown by the history of their respective administrations. Indeed, it stands, not as a matter of controlling authority, but as a fact of history, that these claims have never, since our existence as a nation, been deemed by any President worthy of recommendation to Congress.

Claims to payment can rest only on the plea of indebtedness on the part of the government. This requires that it should be shown that the United States have incurred liability to the claimants, either by such acts as deprived them of their property, or by having actually taken it for public use without making just compensation for it.

The first branch of the proposition, that on which an equitable claim to be indemnified by the United States for losses sustained might rest, requires at least a cursory examination of the history of the transactions on which the claims depend. The first link, which in the chain of events arrests attention, is the treaties of alliance and of amity and commerce between the United States and France, negotiated in 1778. By those treaties peculiar privileges were secured to the armed vessels of each of the contracting parties in the ports of the other; the freedom of trade was greatly enlarged; and mutual obligations were incurred by each to guarantee to the other their territorial possessions in America.

In 1792–'3, when war broke out between France and Great Britain, the former claimed privileges in American ports which our government did not admit as deducible from the treaties of 1778, and which it was held were in conflict with obligations to the other belligerent powers. The liberal principle of one of the treaties referred to—that free ships make free goods, and that subsistence and supplies were not contraband of war unless destined to a blockaded port—was found, in a commercial view, to operate disadvantageously to France as compared with her enemy, Great Britain, the latter asserting under the law of nations the right to capture, as contraband, supplies when bound for an enemy's port.

Induced mainly, it is believed, by these considerations, the government of France decreed on the 9th of May, 1793, the first year of the war, that "the French people are no longer permitted to fulfill towards the neutral powers in general the vows they have so often

manifested, and which they constantly make for the full and entire liberty of commerce and navigation;" and, as a counter measure to the course of Great Britain, authorized the seizure of neutral vessels bound to an enemy's port, in like manner as that was done by her great maritime rival. This decree was made to act retrospectively, and to continue until the enemies of France should desist from depredations on the neutral vessels bound to the ports of France. Then followed the embargo by which our vessels were detained in Bordeaux; the seizure of British goods on board of our ships, and of the property of American citizens, under the pretence that it belonged to English subjects, and the imprisonment of American citizens captured on the high seas.

Against these infractions of existing treaties and violations of our rights as a neutral power, we complained and remonstrated. For the property of our injured citizens we demanded that due compensation should be made, and from 1793 to 1797 used every means, ordinary and extraordinary, to obtain redress by negotiation. In the last mentioned year these efforts were met by a refusal to receive a minister sent by our government with special instructions to represent the amicable disposition of the government and people of the United States, and their desire to remove jealousies and to restore confidence by showing that the complaints against them were groundless. Failing in this, another attempt to adjust all differences between the two republics was made in the form of an extraordinary mission composed of three distinguished citizens, but the refusal to receive was offensively repeated; and thus terminated this last effort to preserve peace and restore kind relations with our early friend and ally, to whom a debt of gratitude was due which the American people have never been willing to depreciate or to forget. Years of negotiation had not only failed to secure indemnity for our citizens and exemption from further depredation, but these long continued efforts had brought upon the government the suspension of diplomatic intercourse with France, and such indignities as to induce President Adams, in his message of May 16, 1797, to Congress, convened in special session, to present it as the particular matter for their consideration, and to speak of it in terms of the highest indignation. Thenceforward the action of our government assumed a character which clearly indicates that hope was no longer entertained from the amicable feeling or justice of the government of France, and hence the subsequent measures were those of force.

On the 28th of May, 1798, an act was passed for the employment of the navy of the United States against "armed vessels of the republic of France," and authorized their capture, if "found hovering on the coast of the United States for the purpose of committing depredations on the vessels belonging to the citizens thereof." On the 18th of June, 1798, an act was passed prohibiting commercial intercourse with France, under the penalty of the forfeiture of the vessels so employed. On the 25th of June, same year, an act to arm the merchant marine to oppose searches, capture aggressors, and recapture American vessels taken by the French. On the 28th of June, same year, an act for the condemnation and sale of French vessels captured

by authority of the act of 28th of May preceding. On the 27th of July, same year, an act abrogating the treaties and the convention which had been concluded between the United States and France, and declaring "that the same shall not henceforth be regarded as legally obligatory on the government or citizens of the United States." On the 9th of the same month an act was passed which enlarged the limits of the hostilities then existing, by authorizing our public vessels to capture armed vessels of France wherever found upon the high seas, and conferred power on the President to issue commissions to private armed vessels to engage in like service.

These acts, though short of a declaration of war, which would put all the citizens of each country in hostility with those of the other, were nevertheless actual war, partial in its application, maritime in its character, but which required the expenditure of much of our public treasure, and much of the blood of our patriotic citizens, who, in vessels but little suited to the purposes of war, went forth to battle on the high seas for the rights and security of their fellow-citizens, and to repel indignities offered to the national honor.

It is not, then, because of any failure to use all available means, diplomatic and military, to obtain reparation, that liability for private claims can have been incurred by the United States; and if there is any pretence for such liability, it must flow from the action, not from the neglect, of the United States. The first complaint on the part of France was against the proclamation of President Washington, of April 22, 1793. At that early period in the war, which involved Austria, Prussia, Sardinia, the United Netherlands, and Great Britain, on the one part, and France on the other, the great and wise man who was the Chief Executive, as he was and had been the guardian of our then infant republic, proclaimed that "the duty and interest of the United States require that they should, with sincerity and good faith, adopt and pursue a conduct friendly and impartial towards the belligerent powers." This attitude of neutrality, it was pretended, was in disregard of the obligations of alliance between the United States and France. And this, together with the often-renewed complaint that the stipulations of the treaties of 1778 had not been observed and executed by the United States, formed the pretext for the series of outrages upon our government and its citizens, which finally drove us to seek redress and safety by an appeal to force. The treaties of 1778, so long the subject of French complaints, are now understood to be the foundation upon which are laid these claims of indemnity from the United States for spoliations committed by the French prior to 1800. The act of our government which abrogated not only the treaties of 1778, but also the subsequent consular convention of 1788, has already been referred to, and it may be well here to inquire what the course of France was in relation thereto. By the decrees of 9th of May, 1793, 7th of July, 1796, and 2d of March, 1797, the stipulations which were then and subsequently most important to the United States were rendered wholly inoperative. The highly injurious effects which these decrees are known to have produced, show how vital were the provisions of treaty which they violated, and make manifest the incontrovertible right of the United States to declare, as

the consequence of these acts of the other contracting party, the treaties at an end.

The next step in this inquiry is, whether the act declaring the treaties null and void was ever repealed, or whether by any other means the treaties were ever revived so as to be either the subject or the source of national obligation? The war, which has been described, was terminated by the treaty of Paris of 1800, and to that instrument it is necessary to turn to find how much of pre-existing obligations between the two governments outlived the hostilities in which they had been engaged. By the 2d article of the treaty of 1800, it was declared that the ministers plenipotentiary of the two parties, not being able to agree respecting the treaties of alliance, amity, and commerce of 1778, and the convention of 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time, and until they shall have agreed upon these points the said treaties and convention shall have no operation.

When the treaty was submitted to the Senate of the United States, the second article was disagreed to, and the treaty amended by striking it out, and inserting a provision that the convention then made should continue in force eight years from the date of ratification, which convention thus amended was accepted by the First Consul of France, with the addition of a note explanatory of his construction of the convention, to the effect that by the retrenchment of the second article, the two States renounce the respective pretensions which were the object of the said article.

It will be perceived by the language of the second article, as originally framed by the negotiators, that they had found themselves unable to adjust the controversies on which years of diplomacy and of hostilities had been expended; and that they were at last compelled to postpone the discussions of those questions to that most indefinite period, a "convenient time." All, then, of these subjects, which was revived by the convention, was the right to renew, when it should be convenient to the parties, a discussion, which had already exhausted negotiation, involved the two countries in a maritime war, and on which the parties had approached no nearer to concurrence than they were when the controversy began.

The obligations of the treaties of 1778, and the convention of 1788, were mutual, and estimated to be equal. But, however onerous they may have been to the United States, they had been abrogated, and were not revived by the convention of 1800, but expressly spoken of as suspended until an event which could only occur by the pleasure of the United States. It seems clear, then, that the United States were relieved of no obligation to France by the retrenchment of the second article of the convention; and if thereby France was relieved of any valid claims against her, the United States received no consideration in return; and that if private property was taken by the United States from their own citizens, it was not for public use. But it is here proper to inquire whether the United States did relieve France from valid claims against her on the part of citizens of the United States, and did thus deprive them of their property.

The complaints and counter-complaints of the two governments had

been that treaties were violated, and that both public and individual rights and interests had been sacrificed. The correspondence of our ministers engaged in negotiations, both before and after the convention of 1800, sufficiently proves how hopeless was the effort to obtain full indemnity from France for injuries inflicted on our commerce from 1793 to 1800, unless it should be by an account in which the rival pretensions of the two governments should each be acknowledged, and the balance struck between them.

It is supposable, and may be inferred from the contemporaneous history as probable, that had the United States agreed in 1800 to revive the treaties of 1778 and 1788 with the construction which France had placed upon them, that the latter government would, on the other hand, have agreed to make indemnity for those spoliations which were committed under the pretext that the United States were faithless to the obligations of the alliance between the two countries.

Hence the conclusion, that the United States did not sacrifice private rights or property to get rid of public obligations, but only refused to reassume public obligations for the purpose of obtaining the recognition of the claims of American citizens on the part of France.

All those claims, which the French government was willing to admit, were carefully provided for elsewhere in the convention, and the declaration of the First Consul, which was appended in his additional note, had no other application than to the claims which had been mutually made by the governments, but on which they had never approximated to an adjustment. In confirmation of the fact that our government did not intend to cease from the prosecution of the just claims of our citizens against France, reference is here made to the annual message of President Jefferson of December 8, 1801, which opens with expressions of his gratification at the restoration of peace among sister nations; and after speaking of the assurances received from all nations with whom we had principal relations, and of the confidence thus inspired, that our peace with them would not have been disturbed if they had continued at war with each other, he proceeds to say:

"But a cessation of irregularties which had afflicted the commerce of neutral nations, and of the irritations and injuries produced by them, cannot but add to this confidence, and strengthen at the same time the hope that wrongs committed on unoffending friends, under a pressure of circumstances, will now be reviewed with candor, and will be considered as founding just claims of retribution for the past and new assurances for the future."

The zeal and diligence with which the claims of our citizens against France were prosecuted appear in the diplomatic correspondence of the three years next succeeding the convention of 1800, and the effect of these efforts is made manifest in the convention of 1803, in which provision was made for payment of a class of cases, the consideration of which France had at all previous periods refused to entertain, and which are of that very class which it has been often assumed were released by striking out the second article of the convention of 1800. This is shown by reference to the preamble, and to the fourth and fifth articles of the convention of 1803, by which were admitted among

the debts due by France to citizens of the United States the amounts chargeable for "prizes made at sea in which the appeal has been properly lodged within the time mentioned in the said convention of the 30th of September, 1800;" and this class was further defined to be only "captures of which the council of prizes shall have ordered restitution, it being well understood that the claimant cannot have recourse to the United States, otherwise than he might have had to the French republic, and only in case of the insufficiency of the captors."

If, as was affirmed on all hands, the convention of 1803 was intended to close all questions between the governments of France and the United States, and twenty millions of francs were set apart as a sum which might exceed, but could not fall short of, the debts due by France to the citizens of the United States, how are we to reconcile the claim now presented with the estimates made by those who were of the time and immediately connected with the events, and whose intelligence and integrity have in no small degree contributed to the character and prosperity of the country in which we live? Is it rational to assume that the claimants who now present themselves for indemnity by the United States represent debts which would have been admitted and paid by France but for the intervention of the United States? And is it possible to escape from the effect of the voluminous evidence tending to establish the fact that France resisted all these claims, that it was only after long and skillful negotiation that the agents of the United States obtained the recognition of such of the claims as were provided for in the conventions of 1800 and 1803? And is it not conclusive against any pretensions of possible success on the part of the claimants, if left unaided to make their applications to France, that the only debts due to American citizens, which have been paid by France, are those which were assumed by the United States as part of the consideration in the purchase of Louisiana?

There is little which is creditable either to the judgment or patriotism of those of our fellow-citizens who at this day arraign the justice, the fidelity, or love of country, of the men who founded the republic, in representing them as having bartered away the property of individuals to escape from public obligations, and then to have withheld from them just compensation. It has been gratifying to me, in tracing the history of these claims, to find that ample evidence exists to refute an accusation which would impeach the purity, the justice, and the magnanimity, of the illustrious men who guided and controlled the early destinies of the republic.

I pass from this review of the history of the subject and, omitting many substantial objections to these claims, proceed to examine somewhat more closely the only grounds upon which they can by possibility be maintained.

Before entering on this, it may be proper to state distinctly certain propositions which, it is admitted on all hands, are essential to prove the obligations of the government.

First. That, at the date of the treaty of September 30, 1800, these claims were valid and subsisting as against France.

Second. That they were released or extinguished by the United States in that treaty, and by the manner of its ratification.

Third. That they were so released or extinguished for a consideration valuable to the government, but in which the claimants had no more interest than any other citizens.

The convention between the French republic and the United States of America, signed at Paris on the 30th day of September, 1800, purports, in the preamble, to be founded on the equal desire of the First Consul (Napoleon Bonaparte) and the President of the United States, to terminate the differences which have arisen between the two states. It declares, in the first place, that there shall be firm, inviolable, and universal peace, and a true and sincere friendship, between the French republic and the United States. Next it proceeds, in the second, third, fourth, and fifth articles, to make provision in sundry respects, having reference to past differences, and the transition from the state of war between the two countries to that of general and permanent peace. Finally, in the residue of the twenty-seventh article, it stipulates anew the conditions of amity and intercourse, commercial and political, thereafter to exist, and, of course, to be substituted in place of the previous conditions of the treaties of alliance and of commerce, and the consular convention, which are thus tacitly, but unequivocally, recognized as no longer in force, but in effect abrogated, either by the state of war, or by the political action of the two republics.

Except in so far as the whole convention goes to establish the fact that the previous treaties were admitted on both sides to be at an end, none of the articles are directly material to the present question, save the following:

ART. II. "The ministers plenipotentiary of the two parties not being able to agree at present respecting the treaty of alliance of 6th February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and, until they may have agreed upon these points, the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows:

ART. V. "The debts contracted by one of the two nations with individuals of the other, or by the individuals of one with the individuals of the other, shall be paid, or the payment may be prosecuted, in the same manner as if there had been no misunderstanding between the two States. But this clause shall not extend to indemnities claimed on account of captures or confiscations."

On this convention being submitted to the Senate of the United States, they consented and advised to its ratification with the following proviso:

"*Provided*, That the second article be expunged, and that the following article be added or inserted: It is agreed that the present convention shall be in force for the term of eight years from the time of the exchange of ratifications."

The spirit and purpose of this change are apparent and unmistakable. The convention, as signed by the respective plenipotentiaries,

did not adjust all the points of controversy. Both nations, however, desired the restoration of peace. Accordingly, as to those matters in the relations of the two countries, concerning which they could agree, they did agree for the time being; and as to the rest, concerning which they could not agree, they suspended and postponed further negotiation.

They abandoned no pretensions, they relinquished no right on either side, but simply adjourned the question until a "convenient time." Meanwhile, and until the arrival of such convenient time, the relations of the two countries were to be regulated by the stipulations of the convention.

Of course, the convention was on its face a temporary and provisional one, but in the worst possible form of prospective termination. It was to cease at a convenient time. But how should that convenient time be ascertained? It is plain that such a stipulation, while professedly not disposing of the present controversy, had within itself the germ of a fresh one; for the two governments might at any moment fall into dispute on the question whether that convenient time had or had not arrived. The Senate of the United States anticipated and prevented this question by the only possible expedient, that is, the designation of a precise date. This being done, the remaining parts of the second article became superfluous and useless; for, as all the provisions of the convention would expire in eight years, it would necessarily follow that negotiations must be renewed within that period; more especially as the operation of the amendment, which covered the whole convention was, that even the stipulation of peace in the first article became temporary and expired in eight years, whereas that article, and that article alone, was permanent according to the original tenor of the convention.

The convention thus amended being submitted to the First Consul, was ratified by him, his act of acceptance being accompanied with the following declaratory note:

"The government of the United States having added in its ratification that the convention should be in force for the space of eight years, and having omitted the second article, the government of the French republic consents to accept, ratify, and confirm the above convention, with the addition importing that the convention shall be in force for the space of eight years, and with the retrenchment of the second article: provided that by this retrenchment the two states renounce the respective pretensions which are the object of the said article."

The convention, as thus ratified by the First Consul, having been again submitted to the Senate of the United States, that body resolved that "they considered the convention as fully ratified," and returned the same to the President for promulgation, and it was accordingly promulgated in the usual form by President Jefferson.

Now, it is clear, that in simply resolving that "they considered the convention as fully ratified," the Senate did in fact abstain from any express declaration of dissent or assent to the construction put by the First Consul on the retrenchment of the second article. If any inference, beyond this, can be drawn from their resolution, it is, that they

regarded the proviso annexed by the First Consul to his declaration of acceptance as foreign to the subject, as nugatory, or as without consequence or effect. Notwithstanding this proviso, they considered the ratification as full. If the new proviso made any change in the previous import of the convention, then it was not full. And in considering it a full ratification, they in substance deny that the proviso did in any respect change the tenor of the convention.

By the second article, as it originally stood, neither republic had relinquished its existing rights or pretensions, either as to other previous treaties, or the indemnities mutually due or claimed, but only deferred the consideration of them to a convenient time. By the amendment of the Senate of the United States, that convenient time, instead of being left indefinite, was fixed at eight years; but no right or pretension of either party was surrendered or abandoned.

If the Senate erred in assuming that the proviso added by the First Consul did not affect the question, then the transaction would amount to nothing more than to have raised a new question to be disposed of on resuming the negotiations, namely, the question whether the proviso of the First Consul did or not modify or impair the effect of the convention as it had been ratified by the Senate.

That such, and such only, was the true meaning and effect of the transaction; that it was not, and was not intended to be, a relinquishment by the United States of any existing claim on France, and especially that it was not an abandonment of any claims of individual citizens, nor the set-off of these against any conceded national obligations to France, is shown by the fact that President Jefferson did at once resume and prosecute to successful conclusion negotiations to obtain from France indemnification for the claims of citizens of the United States existing at the date of that convention; for, on the 30th of April, 1803, three treaties were concluded at Paris between the United States of America and the French republic, one of which embraced the cession of Louisiana; another stipulated for the payment of sixty millions of francs by the United States to France; and a third provided, that for the satisfaction of sums due by France to citizens of the United States at the conclusion of the convention of September 30, 1800, and in express compliance with the second and fifth articles thereof, a further sum of twenty millions of francs should be appropriated and paid by the United States. In the preamble to the first of these treaties, which ceded Louisiana, it is set forth that—

"The President of the United States of America and the First Consul of the French republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendémaire, an. 9, (30th September, 1800,) relative to the rights claimed by the United States in virtue of the treaty concluded at Madrid the 27th of October, 1795, between his Catholic Majesty and the said United States, and willing to strengthen the union and friendship which at the time of the said convention was happily re-established between the two nations, have respectively named their plenipotentiaries," who "have agreed to the following articles."

Here is the most distinct and categorical declaration of the two gov-

ernments, that the matters of claim in the second article of the convention of 1800 had not been ceded away, relinquished, or set off, but they were still subsisting subjects of demand against France. The same declaration appears in equally emphatic language in the third of these treaties, bearing the same date, the preamble of which recites that—

"The President of the United States of America and the First Consul of the French republic, in the name of the French people, having by a treaty of this date terminated all difficulties relative to Louisiana, and established on a solid foundation the friendship which unites the two nations, and being desirous, in compliance with the second and fifth articles of the convention of the 8th Vendémaire, ninth year of the French republic, (30th September, 1800,) to secure the payment of the sums due by France to the citizens of the United States," and "have appointed plenipotentiaries,' who agreed to the following among other articles:

"ART. I. The debts due by France to citizens of the United States, contracted before the 8th of Vendémaire, ninth year of the French republic, (30th September, 1800,) shall be paid according to the following regulations, with interest at six per cent., to commence from the periods when the accounts and vouchers were presented to the French government.

"ART II. The debts provided for by the preceding article are those whose result is comprised in the conjectural note annexed to the present convention, and which, with the interest, cannot exceed the sum of twenty millions of francs. The claims comprised in the said note which fall within the exceptions of the following articles shall not be admitted to the benefit of this provision.

"ART. IV. It is expressly agreed that the preceding articles shall comprehend no debts but such as are due to citizens of the United States, who have been and are yet creditors of France, for supplies, for embargoes, and prizes made at sea, in which the appeal has been properly lodged within the time mentioned in the said convention, 8th Vendémaire, ninth year, (30th September, 1800.)

"ART. V. The preceding articles shall apply only—1st, to captures of which the council of prizes shall have ordered restitution, it being well understood that the claimant cannot have recourse to the United States, otherwise than he might have had to the government of the French republic, and only in case of insufficiency of the captors; 2d, the debts mentioned in the said fifth article of the convention, contracted before the 8th Vendémaire, an. 9, (30th September, 1800,) the payment of which has been heretofore claimed of the actual government of France, and for which the creditors have a right to the protection of the United States: the said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed. It is the express intention of the contracting parties not to extend the benefit of the present convention to reclamations of American citizens, who shall have established houses of commerce in France, England, or other countries than the United States, in partnership with foreigners, and who by that reason, and the nature of their commerce, ought to be regarded as domiciliated in the places where such houses exist.

All agreements and bargains concerning merchandise, which shall not be the property of American citizens, are equally excepted from the benefit of the said convention, saving, however, to such persons their claims in like manner as if this treaty had not been made.

"ART. XII. In case of claims for debts contracted by the government of France with citizens of the United States since the 8th Vendémaire, ninth year, (30th September, 1800,) not being comprised in this convention, may be pursued, and the payment demanded in the same manner as if it had not been made."

Other articles of the treaty provide for the appointment of agents to liquidate the claims intended to be secured, and for the payment of them, as allowed, at the treasury of the United States. The following is the concluding clause of the tenth article:

"The rejection of any claim shall have no other effect than to exempt the United States from the payment of it, the French government reserving to itself the right to decide definitely on such claim so far as it concerns itself."

Now, from the provisions of the treaties thus collated, the following deductions undeniably follow, namely:

First. Neither the second article of the convention of 1800, as it originally stood, nor the retrenchment of that article, nor the proviso in the ratification by the First Consul, nor the action of the Senate of the United States thereon, was regarded by either France or the United States as the renouncement of any claims of American citizens against France.

Second. On the contrary, in the treaties of 1803 the two governments took up the question precisely where it was left on the day of the signature of that of 1800, without suggestion, on the part of France, that the claims of our citizens were excluded by the retrenchment of the second article or the note of the First Consul, and proceeded to make ample provision for such as France could be induced to admit were justly due, and they were accordingly discharged in full, with interest, by the United States in the stead and behalf of France.

Third. The United States, not having admitted in the convention of 1800 that they were under any obligations to France by reason of the abrogation of the treaties of 1778 and 1788, persevered in this view of the question by the tenor of the treaties of 1803, and therefore had no such national obligation to discharge, and did not, either in purpose or in fact, at any time undertake to discharge themselves from any such obligation at the expense and with the property of individual citizens of the United States.

Fourth. By the treaties of 1803, the United States obtained from France the acknowledgment and payment, as part of the indemnity for the cession of Louisiana, of claims of citizens of the United States for spoliations so far as France would admit her liability in the premises; but even then the United States did not relinquish any claim of American citizens not provided for by those treaties: so far from it, to the honor of France be it remembered, she expressly reserved to herself the right to reconsider any rejected claims of citizens of the United States.

Fifth. As to claims of citizens of the United States against France, which had been the subject of controversy between the two countries prior to the signature of the convention of 1800, and the further consideration of which was reserved for a more convenient time by the second article of that convention: for these claims, and these only, provision was made in the treaties of 1803, all other claims being expressly excluded by them from their scope and purview.

It is not to be overlooked, though not necessary to the conclusion, that by the convention between France and the United States of the 4th of July, 1831, complete provision was made for the liquidation, discharge, and payment, on both sides, of all claims of citizens of either against the other for unlawful seizures, captures, sequestrations, or destructions of the vessels, cargoes, or other property, without any limitation of time, so as in terms to run back to the date of the last preceding settlement, at least to that of 1803, if not to the commencement of our national relations with France.

This review of the successive treaties between France and the United States has brought my mind to the undoubting conviction that while the United States have, in the most ample and the completest manner, discharged their duty toward such of their citizens as may have been at any time aggrieved by acts of the French government, so, also, France has honorably discharged herself of all obligations in the premises toward the United States. To concede what this bill assumes, would be to impute undeserved reproach both to France and to the United States.

I am, of course, aware that the bill proposes only to provide indemnification for such valid claims of citizens of the United States against France as shall not have been stipulated for and embraced in any of the treaties enumerated. But, in excluding all such claims, it excludes all in fact for which, during the negotiations, France could be persuaded to agree that she was in any wise liable to the United States or our citizens. What remains? And for what is five millions appropriated? In view of what has been said, there would seem to be no ground on which to raise a liability of the United States, unless it be the assumption that the United States are to be considered the insurer and the guarantor of all claims, of whatever nature, which any individual citizen may have against a foreign nation.

FRANKLIN PIERCE.

WASHINGTON, *February* 17, 1855.

Report of the Committee of Foreign Relations respecting French spoliations, from 1793 *to* 1800.

IN THE HOUSE OF REPRESENTATIVES, *March* 25, 1824.

Mr. FORSYTH made the following

REPORT.

On the petitions of Hadrianus Van Noorden, William and Nathaniel Hooper, Daniel Henshaw, several merchants and underwriters of Salem, several merchants of Gloucester, several merchants and underwriters of Alexandria, District of Columbia, several merchants of Washington, North Carolina, Henry Clark and others, of Kennebunk, and several others, merchants, in Maine, referred to the Committee of Foreign Relations, they report:

That no evidence accompanies either of the petitions, all of which, except the first, are literally the same, having been apparently prepared by concert among the claimants to be presented to Congress. To discriminate between them is not practicable, if it were desirable. The committee are compelled to present, in general terms, the nature of these claims, as set forth by the parties interested, and to examine, as briefly as possible, the grounds upon which relief is asked from the government of the United States. The claims are founded upon spoliations committed by the private and public armed vessels of France between the years 1793 and 1800.

The petitioners allege that the French government, to the date of the ratification of the treaty of 1800, always considered the recognition of their claims as due to its honor, and attached them as a charge upon its national character.

That the government of the United States, which had volunteered its agency for the recovery of them from France, exercised its power and authority to prevent the petitioners from obtaining indemnity; that the government of the United States received from France a full and fair equivalent for these claims, in the discharge from its liabilities under the treaties with France, and the abrogation of these treaties.

Similar applications, if not by the same persons, have been frequently made to Congress, and reports upon them are to be found in the records of the House of Representatives and of the Senate. None of these applications have been successful. Without attempting even to enumerate the failures to obtain a sanction to their statements, and to their claims, the committee refer the House to a detailed report of the various acts of the government of the United States, and of France, from 1793 and 1800, made by a select committee, on the 22d of April, 1802, to which applications like the present were referred. Governed by that report, the Committee on Foreign Relations are not satisfied that the French government ever admitted the justice of the claims of the petitioners, or ever intended to pay them;

that the government of the United States used every effort, even to to war itself, to rescue the property of American merchants from the lawless violence of France; that its efforts to procure payment for the spoliations committed by the French cruisers were not discontinued until it was obvious that there was no hope of success. That this government *never* received from France any equivalent for the claims of Americans upon France. The war of aggression was commenced by France, and every act of the United was a just retaliation for previous injury. The treaties with France were annulled by an act of Congress, in 1798, in consequence of the utter disregard of the stipulations of them by that power.

In short, to justify their claims upon the United States, the petitioners assume that France was right and their own government wrong. That France was prepared to make a just reparation for the outrages committed under her own laws until released from her obligations by the United States, who were faithless to their trust, in the first instance, and have been regardless of the obligations of justice ever since—assumptions not consistent with truth, nor creditable to the patriotism of those who make them. The committee recommend to the House to adopt the following resolution:

Resolved, That petitions of the several persons who ask indemnity for spoliations committed by French cruisers on their property between the years 1793 and 1800 be rejected.

IN THE HOUSE OF REPRESENTATIVES, *February* 21, 1835.

STATEMENT OF MR. CAMBRELENG,

On French Spoliations.

FRENCH SPOLIATIONS PRIOR TO 1800.

Statements submitted in the Committee of Foreign Affairs, relative to the bill making provision for the satisfaction of claims for French spoliations prior to 1800.

[*Note.*—Owing to the late period at which this subject was presented to the committee, a majority of the committee declined adopting either of the following statements as the report of the committee. They directed their chairman to submit a motion that the bill be laid on the table, and authorized a resolution that the two following statements *should be printed*, which was ordered accordingly.]

The claims in question are represented to be for spoliations committed by the public and private armed vessels of France on the commerce of the United States, prior to the date of the treaty between the two nations of the 30th of September, 1800. It is alleged, that by expunging the second article of that treaty, and subsequently renouncing our pretensions to indemnity for these spoliations, we have deprived our

citizens of their right to prosecute their claims on France, released that nation from her obligations, and thereby made the United States responsible for them. It is also alleged that the claims were sacrificed to obtain from France the renunciation of ancient and embarrassing national stipulations, and that the claimants have thereby become entitled to indemnity for private property taken for public use.

Without conceding that an unoffending and aggrieved nation can be made responsible for the outrages committed by another power, by any provisions inserted in a treaty, in violation of instructions, or by any stipulation, short of a positive character assuming the obligation to indemnify the parties injured, the question will be discussed upon the grounds assumed by those who have heretofore advocated these claims.

It is stated, that when France, in 1800, renounced her pretensions to the exclusive privileges and guarantee acquired by the treaties of amity and commerce, and of alliance of the 6th of February, 1778, it relieved the United States from very embarrassing and perpetual obligations. By the commercial treaty, each nation was to enjoy exclusive privileges as to privateers and prizes; free trade was mutually allowed with belligerent countries, and the flag of each nation was to protect the cargo. Both treaties were made under the expectation that Great Britain would declare war against France, and were designed for the mutual benefit of both countries, should such an event occur. The preamble to the treaty of alliance, referring to the commercial treaty then just made, declares that the two powers "have thought it necessary to take into consideration the means of strengthening those [commercial and friendly] engagements, and of rendering them useful to the safety and tranquillity of the two parties; *particularly in case Great Britain, in resentment of that connexion, and of the good correspondence which is the object of the said treaty, should break the peace with France,* either by direct hostilities, or by hindering her commerce and navigation in a manner contrary to the rights of nations, and the peace subsisting between the two crowns: and his Majesty and the said United States *having resolved in that case to join their councils and efforts against the enterprises of their common enemy,* the respective plenipotentiaries empowered to concert the clauses and conditions proper to fulfill the said intentions, have, after most mature deliberation, concluded and determined on the following articles."

The following is the second article of the treaty:

"The *essential and direct end of the present defensive alliance* is to maintain effectually the liberty, sovereignty, and independence, absolute and unlimited, of the said United States, as well in matters of government as of commerce."

The British possessions in North America or the Bermudas, if reduced, were to belong to the United States. Islands in or near the Gulf of Mexico, if conquered to appertain to France. By the 9th article—

"The contracting parties declare that, being resolved to fulfill, each on its own part, the clauses and conditions of the present treaty of alliance, according to its own power and circumstances, there shall be

no after claim of compensation on one side or the other, *whatever may be the event of the war.*"

By the 11th article, the United States guaranties to France her possessions in America; and France, on the other hand, guaranties the liberty, sovereignty, and independence of the United States.

Both these treaties were made during our revolutionary war, and both contained stipulations incompatible with the laws of nations and the rights of belligerents. In 1792 France declared war against England: that war not being of the character contemplated or described in our treaty of alliance, we proclaimed our neutrality in 1793, and against that proclamation France never remonstrated or protested until long afterwards, when it became necessary to resist our claims for spoliations by setting up pretensions to indemnity. She soon discovered that it was not for her interest to permit us to enjoy free trade with her enemy, or to suffer our flag to protect belligerent property, as stipulated in the commercial treaty. On the 9th of May, 1793, she issued her first decree, in violation of our treaty of 1778, declaring that "the French people are no longer permitted to fulfill, towards the neutral powers in general, the vows they have so often manifested," and making "its operation retrospective to the date of the declaration of war, and prospective to the period when the enemies of France should cease the depredations of which it complained." This was immediately followed by the embargo of our vessels; the refusal to pay for supplies taken; the capture of our property under various pretences, and the imprisonment of our citizens taken on the high seas. Our ports were treated by France as colonial, for the condemnation and disposal of her prizes, and our neutrality was insolently violated. An accumulation of wrongs, insults and injuries, finally authorized and compelled Congress solemnly to declare on the 7th July, 1798, "that the United States are of right freed and exonerated from the stipulations of the treaties and of the consular convention heretofore concluded between the United States and France; and that the same shall not henceforth be regarded as legally obligatory on the government or citizens of the United States."

The violations of the treaties by France were palpable, and our right to renounce them was in strict conformity to the law of nations. But, however that right may have been disputed by the French commissioners, to obtain advantages in the negotiation, the validity of the act of 1798 never can be questioned in any case between the United States and her own citizens. From the 7th July, in that year, our treaties with France were annulled, never to be revived. Our commissioners had no authority to stipulate for the payment of any sum for the mutual right to abrogate the treaties, nor to promise any compromise, further than to waive discussion of national indemnities, "if the French government should desire it," although the Secretary of State was of opinion that our claims for national injuries growing out of the violation of treaties "would exceed" those of France. The second article of the treaty of 1800, though merely postponing the discussion of these treaties, so far recognized them; and the Senate struck it out of the treaty, if for no other reason, because it was inserted in violation of instructions, and was wholly inconsistent with the declaratory act of 1798. It will

be seen, moreover, that towards the close of the negotiation the French ministers admitted that war existed. If the treaties with France were, from either cause, not in existence on the 30th September, 1800, the United States had no motive to sacrifice the interests of its citizens merely to induce that government to renounce a nullity.

The next inquiry is, were the claims alluded to in the second article, whether national or individual, valid claims on France, and such as this government had a national right to prosecute? It is conceded that if war existed the claims were extinguished. It is true that negotiation was conducted by the ministers of both countries on the basis of peace; but it is also true, that before the close of the negotiation the French ministers, discovering that it was in vain longer to contend for the existence of the ancient treaties, abandoned their pacific ground. The journal of our commissioners, of the 12th September, 1800, states, that the president of the French commission declared that "if the government should think proper to instruct them to make a treaty on the basis of indemnities, and a modified renewal of the old treaties, he would resign sooner than sign such a treaty; adding, that if the question could be determined by an indifferent nation, he was satisfied such a tribunal would say that the present state of things was *war* on the side of America, and that no indemnities could be claimed. The two other commissioners made similar declarations." And after the treaty was signed our own commissioners assumed the same ground; in their letter to the Secretary of State of the 4th of October, 1800, they say: "nor is it conceived that the treaties between the United States and France have undergone a more nullifying operation than the condition of war necessarily imposes. Doubtless the congressional act authorizing the reduction of French cruisers by force, was an authorization of war, limited, indeed, in its extent, but not in its nature. Clearly, also, their subsequent act, declaring that the treaties had ceased to be obligatory, however proper it might be for the removal of doubts, was but declaratory of the actual state of things; and, certainly, it was only from an exercise of the constitutional prerogative *of declaring war*, that either of them derived validity." To corroborate these opinions, it is only necessary to advert to some of the measures authorized by our government. From May, 1798, to March, 1799, inclusive, various measures were adopted, which, taken together, made the war general and sanguinary. We renounced our treaties; authorized our merchantmen to arm; ordered the capture, by our public and private armed vessels, and the condemnation, of all armed French vessels, which included all afloat, for it was during the war between France and England; loans, appropriations, and taxes, for the purposes of war, amounting to more than twelve millions; ordered six seventy-fours and six sloops-of-war to be built; the raising of thirty-six regiments and two battalions; and, in case of invasion, the President was authorized to call into the field an army of seventy-five thousand men. We captured eighty of the armed vessels of France, provided for the exchange of prisoners, and authorized retaliation on them by punishment, imprisonment, or death. If this was not making war upon France, it is difficult to conceive what constitutes war. The rights and duties of nations are not to be controlled or regulated by

technical construction. War actually existed; the claims, not the treaties, were the cause of it, and the French commissioners had a right to resist those which were excluded upon that ground. If it suited the ministers of both countries to insist on the basis of peace to obtain particular advantages in the progress of the negotiation, their negotiations closed with opposite declarations, and, however it might have been negotiated, the treaty was, by striking out the second article, ratified by both governments on the basis of war.

In defence of these claims much has been said about the various proposals made by our ministers to effect a compromise. It would be sufficient to say, so far as the responsibility of this government is involved in the question, that the unauthorized acts of its ministers, never ratified, nor even perfected, cannot render it liable to pay either for the spoliations committed by another power, or for the renunciation of treaties, which it had solemnly declared void. But it is evident, from the history of the negotiation, that the ministers of the United States were determined never to admit the existence of these treaties, and that the ministers of France were equally resolved never to pay for the spoliations in question. On one side it was contended that there had been no war, for the purpose of enlarging the amount of our individual indemnities; on the other the same ground was assumed, to sustain the existence of the ancient treaties. The French ministers required a preliminary "discussion, in which the meaning of ancient treaties shall be determined, the principles of the laws of nations unfolded, and the application of these principles to the claims brought forward, whether national or individual, clearly shown." The American ministers, in reply, propose the project of a treaty for mutual indemnities. The expediency of providing suitable indemnities is concurred in; but, say the French ministers, "an indemnity cannot result except from an admitted contravention of an acknowledged obligation." On one side the treaties of 1778 and 1788 were considered "as the sole basis of their negotiations;" on the other they could not be regarded "as the basis of the present negotiation for any other purpose" than as it respected claims prior to the 7th July, 1798, when the United States, "by a solemn public act, declared that they were freed and exonerated from them;" and, as our ministers add, "that declaration cannot be recalled." They at the same time (8th May, 1800,) transmit the remainder of the project of a treaty. The correspondence was continued until August the 15th, 1800, when they write to the Secretary of State that "the negotiation must be abandoned or our instructions deviated from." It was on the 20th August, 1800, not for the sake of the claims now in question, nor for the value of treaties which had been annulled, but for the purpose of putting an end to the war, saving property not condemned, and our commerce from future spoliations, and under the impression that the French ministers were really desirous of providing for these spoliations, and sincerely estimated the ancient treaties at some value, that our ministers offered the following articles;

1st. "Let it be declared that the former treaties are renewed and confirmed, and shall have the same effect as if no misunderstanding

between the two powers had intervened, except so far as they are derogated from by the present treaty.

2d. "It shall be optional with either party to pay to the other, within seven years, three millions of francs in money or securities which may be issued for indemnities, and thereby to reduce the rights of the other as to privateers and prizes to those of the most favored nation. And during the said term allowed for option the right of both parties shall be limited by the time of the most favored nation.

3d. "The mutual guarantee in the treaty of alliance shall be so specified and limited that its future obligation shall be, on the part of France, when the United States shall be attacked, to furnish and deliver at her own ports military stores to the amount of one million of francs; and on the part of the United States, when the French possessions in America, in any future war, shall be attacked, to furnish and deliver at their own ports a like amount in provisions. It shall, moreover, be optional for either party to exonerate itself wholly of its obligation, by paying to the other, within seven years, a gross sum of five millions of francs in money, or such securities as may be issued for indemnities.

4th. "The articles of commerce and navigation, except the 17th article of the treaty, shall admit of modifications, reserving for their principle the rights of the most favored nation, where it shall not be otherwise agreed, and be limited in their duration to twelve years.

5th. "There shall be a reciprocal stipulation for indemnities, and these indemnities shall be limited to the claims of individuals, and adjusted agreeably to the principles and manner proposed by the American ministers in their project of a treaty heretofore delivered, except where it shall be otherwise agreed. Public ships taken on either side shall be restored or paid for.

6th. "All property seized by either party and not yet definitively condemned, or which may be seized before the exchange of the ratifications of the present treaty, shall be restored on reasonable (though it may be informal) proof of its belonging to the other, except contraband goods of the United States destined to an enemy's port. This provision to take effect from the signature of the treaty; and if any condemnations should take place contrary to the intent of this stipulation, before knowledge of the same shall be obtained, the property so condemned shall be paid for without delay."

Every stipulation in these propositions of a national character was reciprocal, whether relating to obligations or releases. These articles formed the basis of a very useless negotiation. The French ministers made a proposition in lieu of them, by which, to use the language of our ministers, "the indemnities may be sacrificed and the treaties remain recognized and confirmed." Much negotiation took place, till, as the journal of the proceedings of the 12th September, 1800, states, the French ministers "openly avowed that their real object was to avoid, by every means, any engagement to pay indemnities, giving as one reason the utter inability of France to pay, in the situation in which she would be left by the present war." It was on that occasion that the president of the French commission made the declaration before alluded to, that, if the government should "instruct

them to make a treaty on the basis of indemnities, and a modified renewal of the old treaties, he would resign sooner than sign such a treaty;" "that *the present state of things was war on the side of America, and that no indemnities could be claimed.*" The other commissioners made similar declarations. The American ministers tell us that they abandoned "all hope of obtaining indemnities with any modification of the treaties;" and that they determined, by a "temporary arrangement, to extricate the United States *from the war*, or that peculiar state of hostility in which they are at present involved, save the immense property of our citizens now depending before the council of prizes, and secure, as far as possible, our commerce against the abuses of captures during *the present war.*" Had they directly and expressly renounced forever the whole of the indemnities which were excluded by the basis of war, they would have exercised no other right than that which necessarily belongs to every government, and which involves no liability for such renounced spoliations. They had prosecuted the negotiation with more than ordinary success. France commenced with claims for national indemnities, which she ultimately effectually abandoned, by the second article. She proposed a new treaty, on terms of national equality, on the condition of "an *entire silence* on the subject of *indemnities;*" yet she made a new treaty, embracing indemnities, not only for involuntary wrongs suffered by our citizens, but for her voluntary contracts with them; which class of claims we had no national right to enforce, nor was France bound to admit them. Our ministers had prosecuted these rejected claims till they had ascertained that France would not recognize them without our acknowledging the existence of treaties which had been extinguished by our solemn declaration and by war; and that, even if it had been possible or practicable to comply with their proposition, our claimants were to be put off with a promise—absolutely worth nothing—to pay at a remote and indefinite period, made by a government declaring that its real object was to avoid indemnities. They determined (and justly determined) that we were under no national obligation to prosecute a class of claims, at least of doubtful validity, according to the law of nations, by sacrificing other classes for indemnities acknowledged to be due our citizens, amounting to millions, and by continuing the war between the two countries. But let our ministers speak for themselves. In their letter of the 4th of October, 1800, transmitting the convention, they say: "That is was indispensable to the granting of indemnities, not only that the treaties should have an unqualified recognition, but that their future operation should not be varied in any particular, for *any consideration or compensation whatever.* In short, they thought proper to add, *what was quite unnecessary, that their real object was to avoid indemnities, and that it was not in the power of France to pay them.*"

"No time was requisite for the American ministers to intimate that it had become useless to pursue the negotiation any further."

"It accorded as little with their views as with their instructions to subject their country perpetually to the mischievous effects of those treaties, in order to obtain a promise of indemnity at a remote period—a promise which might as easily prove delusive as it would reluctantly made, especially as, under the guarantee of the treaty of alliance,

the United States might be immediately called upon for succors, which, if not furnished, would of itself be a sufficient pretext to render abortive the hope of indemnity."

"It only remained for the undersigned to quit France, leaving the United States involved in a contest, and, according to appearances, soon alone in a contest, which it might be as difficult for them to relinquish with honor as to pursue with a prospect of advantage; or else to propose a temporary arrangement, reserving for a definitive adjustment points which could not then be satisfactorily settled, and providing in the meantime against a state of things of which neither party could profit. They elected the latter, and the result has been the signature of a convention."

Such were the convictions of our ministers as to the value of these claims, and such the high considerations which induced them to put an end to the war. It is against these explicit declarations, made after the treaty was signed, when our ministers had no motive to set up pretensions, whether well or ill founded, and against the plain language of the second article, which, even as it stood before it was expunged, effectually abandoned all pretensions, that the advocates of these claims quote the arguments of our ministers when they were urging them upon France in behalf of the claimants, and the declaration of Mr. Madison, in his letter to Mr. Pinckney, when urging our claims on Spain, that the claims from which France was released were *admitted* by France, and were relinquished for a valuable consideration. They were never admitted by France, except on the basis of the existence of treaties which were annulled: and they were abandoned only when it was discovered that France would not pay them, and then not to get rid of national obligations, but to prevent the sacrifice of millions due to our own citizens, and to put an end to the war.

It is not necessary to waste time in discussing the grave questions which have arisen about the great value which has been given to the second article of the treaty of 1800, by merely expunging it, when, if it had remained, it was utterly without value. The following is the article alluded to:

"The ministers plenipotentiary of the two parties not being able to agree at present respecting the treaty of alliance of the 6th of February, 1778, the treaty of amity and commerce of the same date, and the convention of 14th of November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and until they may have agreed upon these points the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows."

The Senate ratified the treaty, "provided the second article be expunged, and that the following article be added or inserted: 'It is agreed that the present convention shall be in force for the term of eight years from the time of the exchange of ratifications.'" Bonaparte returned it with another provision, "that, by this retrenchment, the two States renounce the respective pretensions which are the object of the said article." Of this provision, Mr. Madison says: "I am authorized to say that the President does not regard the declara-

tory clause as more than a legitimate inference from the rejection by the Senate of the second article." The Senate did not, on our part, formally renounce our pretensions, but merely resolve that they considered "the said convention as fully ratified."

It is contended that our government made itself liable by the act of the Senate in expunging the article from the treaty, and that valuable private property was thereby taken for public use. It is difficult to conceive how the act of the Senate could give value to claims, even the discussion of which had been indefinitely postponed by the article as it originally stood, and which discussion depended on the voluntary and exclusive decision of a government which had declared it never would pay them, because they had been extinguished by war. The second article, whether in relation to the claims or to the treaties, was absolutely worth nothing to either of the parties or to their citizens. Mr. Murray, the minister who exchanged the ratifications, says: "If the Senate meant, as I hope, to consider indemnities as worth nothing, the business, I presume, is closed." Mr. Talleyrand states, as the declaration of Mr. Murray, among other things, and in the propriety of which he concurs, that the second article was renounced "as susceptible of producing disquiets in future, by promising nothing but an ulterior and discordant negotiation." But whether these claims were indefinitely postponed by the treaty, as it was signed, or abandoned, as it was ratified by the Senate, or renounced, as it was ratified by Bonaparte—in either form they had no value. Indeed, if it is admitted, as it ought to be in truth and justice, that war actually existed, they never had any value as claims on France. Our government had done all it could do for our citizens, and more than it had a right to do according to the strict rules of public law. It had discharged more than its obligations to the claimants, by continuing the negotiation to obtain them from April to September, 1800, while the country was involved in war; and the claims were never abandoned until they were ascertained to be hopeless.

But the treaty of the 30th September, 1800, though promptly carried into effect by the United States, was never executed by France. The claimants who were provided for by that treaty were but little better off than those now petitioning for relief; for, although that treaty was ratified, and France had solemnly engaged to indemnify our citizens, these promises remained unperformed till the date of the treaty of 1803. Instead of indemnity, we enjoyed nothing but the privilege of a vexatious and protracted negotiation; and our citizens, judging from subsequent experience, would have remained urging their claims to this day, but for the accidental purchase of Louisiana, which country France, in a moment of alarm, transferred to the United States to prevent that vast territory from falling a conquest to the arms of Great Britain. Instead of indemnity, we had only the dissatisfaction of learning, from the ministers of that government, that whenever we should be paid, according to their construction of the treaty of 1800, large classes of our claims would be excluded. As late as March, 1802, in reply to the French minister, Mr. Livingston complains: "Nor is," says he, "the most distant hope, as yet, afforded them [the claimants] by your note of when or how they will

be paid." Indeed, as late as April, 1802, they were still disputing about the provisions of the treaty of 1800, and denying that "indemnities for embargoes" were included in it. Mr. Livingston, as late as the 24th of January, 1803, in his letter to the minister of foreign affairs, says: "I am told the gentleman at the head of the department considers the treaty as applying to debts contracted only under the present government." And on the 8th of March, 1804, nearly a year after the treaty of 1803, the French minister of the public treasury writes the minister of foreign affairs:

"The principal object of this convention [of 1803] was to give satisfaction to the citizens of the United States and to the American government, by procuring the execution of the treaty of September 30, 1800. *The stipulations of it had remained until then without being executed*, and gave rise to pressing solicitations by Mr. Livingston."

Such was the hopeless prospect for our acknowledged claims, when, in March, 1803, it was proposed to purchase a small portion of that immense territory which we acquired in the subsequent negotiation. In Mr. Madison's instructions to Messrs. Livingston and Monroe, on the 2d of March, 1803, he evidently contemplates a treaty on a different basis from that of 1800; he says:

"They [the United States] shall assume, in *such order of priority as the government of the United States may approve*, the payment of claims which have been, or *may be*, acknowledged by the French republic to be due to American citizens, or so much thereof, as, with the payment to be made on the exchange of ratifications, will not exceed the sum of ———.

"It is apprehended that the French government will feel no repugnance to our designating the classes of claims and debts, which, embracing more equitable considerations than the rest, we may believe entitled to a priority of payment.

"We think the following classification such as ought to be adopted by ourselves:

"1st. Claims under the 4th article of the convention of September, 1800.

"2d. Forced contracts or sales imposed upon our citizens by French authorities.

"3d. Voluntary contracts which have been suffered to remain unfulfilled by them."

This was nothing more nor less than a proposition for a new treaty on the basis of public law, which he further explains, viz:

"Where our citizens have become creditors of the French government, in consequence of agencies or appointments derived from it, the United States are under *no particular obligations to patronize their claims*, and, therefore, *no sacrifice of any sort in their behalf* ought to be made in the arrangement." When the negotiation took a wider range, embracing the whole of Louisiana, and twenty millions were set apart for the payment of American claims, it was, undoubtedly, the intention of the ministers of both nations, whatever construction the commissioners may have subsequeutly given to the provisions of the treaty of 1803, to have given that treaty the most liberal and comprehensive effect. France had then no motive for excluding any class

of claims; for the amount to pay the whole had been not only agreed upon, but was believed by both parties to be more than sufficient to meet every just and valid demand; and the United States could have been governed by no consideration but that of doing justice to our own citizens, in the order in which their claims would stand, according to the rules of public law. Mr. Skipwith thought, as late as the 30th July, 1803, that "the American debt would fall much within the twenty millions for which we had engaged, and that *all the fair creditors would be fully satisfied.*" Mr. Livingston, in January, 1804, states that the nominal amount of the claims had been augmented by the presentation of many either without foundation, without vouchers, which did not come within the treaty, or which had been paid. Difficulties having arisen about the true construction of the treaty of 1803, and apprehensions existing that the amount would not be sufficient to cover all the equitable claims, Mr. Madison says, in his letter to Mr. Livingston of January 31, 1804:

"It is clear that the patronage of the government of the United States is due, on prior considerations, to some classes of the claimants than to others; to those, for example, *whose property was wrongfully taken on the high seas by force*, than to those who, by *voluntary contracts*, placed a confidence in the French government, which was disappointed. It seems requisite, nevertheless, that some effort should be made in behalf of those whose claims were embraced by the convention of September 30, 1800, and not provided for by that of April 30, 1803." Mr. Madison proposes various provisions for avoiding the effect of misconstruction of the treaty of 1803, and cautions Mr. Livingston "that no waiver be made which may either still further weaken the claims against France, or give color for turning them over against the United States." Mr. Livingston, in his letter of the 24th February, 1804, to the minister of foreign affairs, says, "The preamble of the convention expressly asserts that its object was to secure the payment of the sums due to the citizens of the United States, in compliance with the *second* and fifth articles of the convention of the 30th September, 1800." He protests against the treaty's being limited to the claims embraced in the explanatory note as an "inaccurate list," and says, "I do not hesitate to declare that it was the intention of the American plenipotentiaries to render the treaty as extensive as the preamble indicates, and to include all debts provided for by the convention of 1800, as far as the twenty millions would go, with some checks to prevent frauds by persons not truly American citizens, or the covering of foreign property under American names." Mr. Skipwith, 25th February, 1804, complains to Mr. Livingston that "a conjectural note rendered by a subordinate bureau of this government, without even a signature being attached to it, was exclusively consecrated by the 2d article of the convention of 1803." Mr. Marbois and Mr. Livingston both concurred that claims not included in the conjectural note "might be paid in virtue of the convention." The commissioners say, on the 22d March, 1804, that they had, on no occasion, said that they "should limit their examination to the claims founded upon the conjectural note, provided they did not exceed the twenty millions of livres." There was no disposition

on the part of France to put any but the most liberal construction upon the treaty, and to make it as comprehensive as possible. Mr. Livingston says, in his letter of 25th July, 1804, "it is certain that France will take care, if there are any claims due under the convention of 1800, unsatisfied by the narrow construction of our agents, to extend the last convention to all such claims.

"In settling the sums due for embargoes, the French government have, contrary to all expectations, granted more even than was asked in many cases.

"The Emperor has taken up the idea that the twenty millions was to cover the whole demand under the convention, and, for this reason, he will make it embrace as many objects as possible."

It is evident that the French government, from a manifest motive of interest, was disposed to include every claim possible in the treaty of 1803, because, as it will be seen on examining that treaty, France had exonerated the United States, reserving to herself the responsibility for all that might be rejected by the board of commissioners. It was undoubtedly the intention of those who framed the treaty of 1803, that it should comprehend the claims designed to be paid by the treaty of 1800. The two treaties, however, vary materially; and the board of commissioners, being obliged to be governed by the last treaty, were under the necessity of excluding some claims which were designed to be provided for by the treaty of 1800, and of admitting others which were not stipulated for in that treaty. By comparing the provisions of the two, the difference between them will be made manifest. The treaty of September 30, 1800 provides in the

3d Article, for the restoration of captured public ships.

4th Article, for captured property not finally condemned to be restored, and also that which may be captured before the exchange of ratifications.

5th Article, for the debts due from each nation to the citizens of the other; but not to extend to indemnities claimed on account of captures or confiscations.

The treaty of April 30, 1803, states, in the preamble, that, "the two nations, being desirous, in compliance with the *second* and fifth articles of the convention of 30th September, 1800, to secure the payment of the sum due by France to the citizens of the United States, have," &c. Notwithstanding this unqualified recognition of the second article of the treaty of 1800, it was not intended by the plenipotentiaries of the two powers to provide for claims not included in that treaty, but for all comprehended in it according to the American construction. The treaty of 1803, however, provides:

1st Article, for debts due by France to citizens of the United States before the 30th September, 1800, to be paid with interest from the time the accounts and vouchers were presented.

2d Article, debts provided for by the preceding article are those whose result is comprised in the *conjectural note* annexed to the present convention. There was no such note attached to the convention of 1800.

3d Article, the mode and time of paying the debts.

4th Article, the preceding articles to comprehend no debts but such

as are due to citizens of the United States who have been, and are yet, creditors of France, for *supplies*, for *embargoes*, and *prizes made at sea*, in which the appeal has been properly lodged within the time mentioned in said convention of 30th September, 1800. There are, in the convention of 1800, no such specifications, no reference to appeals, and no time fixed within which they shall be made.

5th Article. The preceding articles shall apply only—

1st. To captures of which the council of prizes shall have ordered restitution, it being *well understood that the claimant cannot have recourse to the United States otherwise than he might have had to the government of the French republic*, and only in case of the insufficiency (insolvency) of the captors.

2d. The debts, mentioned in the said fifth article of the convention, contracted before the 30th September, 1800, the payment of which has been heretofore claimed by the actual government of France, and for which the creditors have a right to the protection of the government of the United States.

The said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed, nor reclamations of American citizens who shall have established houses of commerce in France, England, or other countries than the United States, in partnership with foreigners, and who, by that reason and the nature of their commerce, ought to be regarded as domiciliated in the places where such houses exist.

Contracts concerning merchandise, not the property of American citizens, equally excepted.

Whatever may have been the design of the ministers of both nations, this was essentially a new treaty, varying in some of its provisions from, and inconsistent with, other stipulations of the treaty of 1800. By referring to the conjectural note, as it will be seen, they recognized claims not provided for in the treaty of 1800; by specifying indemnities for embargoes, they abandoned the French construction of the treaty of 1800; by the reference to appeals to the council of prizes, there is an inconsistency with the treaty of 1800; and, on the other hand, the more definite exclusions in the treaty of 1803, set aside some claims which were probably designed to be provided for in the treaty of 1800. But, under the provisions of the former, notwithstanding the rejection of claims by the commissioners, there can be no doubt that, by specifying particularly embargoes and prizes made at sea, and by recognizing the conjectural note, a much larger amount was included than would ever have been allowed under the treaty of 1800, as it was construed, previous to 1803, by the French government. The commissioners were naturally embarrassed by the conflicting provisions of the two treaties, but were bound to be governed by that of 1803.

In examining the "conjectural note," specially recognized and placed in the first class of claims, they found some which were embraced in the second article of the treaty of 1800. Of the claims found on the note, sixty-eight were rejected, all of which occurred in 1793, 1794, 1795, 1796, 1797, and 1798; and of these six and twenty cases were rejected, not because they did not come within the provisions of the treaty of 1803, for captures, but because they were "never before

the council of prizes." Whether any, or how many, of these claims were allowed cannot be ascertained, as no list of claims admitted was published. There were claims for "indemnities" on every list; and, besides those found on the conjectural note, two hundred and six cases were admitted by the board, and among those, in this class, which were rejected, are to be found some of the largest captures made by France, and not included in the treaty of 1800. Cases of capture were admitted and examined, which were made, not only before the renunciation of the treaties in 1798, but after the war had begun. Claims of every description, under the denomination of captures, seizures, indemnities, freight, supplies, condemnations, bills, money deposited in the treasury at Guadaloupe, goods plundered, detention, balances, requisition, embargoes, specie captured, contracts, demurrage, ordnance, bills from the Isle of France, &c., &c. In short, it seems that every claim which ever existed against France, no matter of what date or character that could be, was presented. The conjectural note embraced—

Credits recognized by the ex-commission, about.....	3,500,000	livres.
Claims to be liquidated, about.....	5,000,000	"
Claims not yet examined, about.....	2,500,000	"
Claims of a nature unknown, about.....	5,500,000	"
Claims under the embargo of 1793, about.....	3,300,000	"
	19,800,000	"

If there were any claims on France not presented to the board of commissioners under the treaty of 1803, it must have been those still pending before the council of prizes. In January, 1805, Mr. Skipwith applied to Mr. Armstrong for money "to enable him to institute judicial proceedings on thirty-five cases of capture, or depredation on American vessels;" and Mr. Delagrange says, in January, 1806, there are sixteen cases before the council of prizes; all of them but one "are for captures posterior to the convention of 1800, and even some have been made after that of 1803; no doubt, therefore, that a favorable issue may be expected for the whole of them." How could these have been included in the treaty of 1800? Mr. Skipwith says, in his application to the council of prizes, complaining of delay, that some of the captures were made "by privateers out of the French Antilles, having set sail either from St. Domingo, Guadaloupe, or from other possessions of the republic." It was to the claims before the council of prizes to which the commissioners referred, in saying that "such claims as come in late, among which, we fear, will be found most of the prize causes, must remain undecided." There had been rejected by the board of commissioners in 1804, according to a full statement of its proceedings published by a member of the board, (from which these various statements are taken,) one hundred and seventy-four cases, amounting to more than nineteen millions of livers.

The claims which were not before the board of commissioners under the treaty of 1803, appear to have been those which had not been decided upon by the council of prizes; others, in which no appeal had

been taken; and some, perhaps, which, from various causes, had not been presented at all. There is no doubt that most of the claims for captures prior to 30th September, 1800, now existing, are those where the parties had neglected to appeal, and, in the language of the treaty of 1800, the property had not been "definitively condemned," or, according to the provisions of the treaty of 1803, they had not been before the council of prizes. For none of these could the United States be liable, because France was not so, by either of the treaties of 1800 and 1803. It was optional with the parties to present their claims, and neither government can be made liable in cases which were not prosecuted to final judgment, either for want of the means to do so, or from neglecting to appeal; nor can either government be bound to indemnify those who never presented them at all to the board of commissioners. The recognition of the conjectural note in the treaty of 1803, authorized every claimant having claims similar to those in the various classes in that note, to present them to the board, and that note embraced spoliations from the commencement of French depredations in 1793.

Of the rejected claims, amounting to more than nineteen millions, it is difficult to perceive how they can escape one of the clauses in the treaty of 1803, which is entirely new, and not to be found in the treaty of 1800. The last clause of the 10th article of that treaty provides, that "the rejection *of any claim* shall have no other effect than *to exempt the United States from the payment of it*, the *French government reserving to itself* the right to *decide, definitively*, on such claim, so *far as it concerns itself.*"

If, in deciding this question between the United States and its citizens, we are to abandon the rules which should regulate the conduct of governments, and place limitations upon their paramount right to put an end to war, be the sacrifice of claims, national or individual, what it may; and if we are to adopt the narrow rules of technical construction in defining war, as the advocates of the claimants have done; then is every claim for French spoliations, according to such rules, extinguished by the treaty of 1803, so far as the United States are concerned. If, as is pretended, "these claims for spoliations were *admitted to be valid* by France on the 30th September, 1800," and were "finally, in the second article of the convention, [of that date,] spoken of as indemnities due;" then would they have been admitted under the treaty of 1803, and allowed. If, on the other hand, they were not admitted to be valid by France on the 30th September, 1800, as is the fact, there can then be no valid claim on the United States, because there was none on France. But, whether they were valid or not on the 30th September, 1800, they were extinguished by the treaty of 1803, which was, whatever may have been the intention of its framers, a new treaty, binding on both nations, and on all the claimants for French spoliations, and the only treaty between France and the United States on the subject of indemnities which has ever been faithfully executed by the former power.

The rights of the United States cannot be affected in any manner by the pretensions which ministers may say set up on one side or the other pending a negotiation. If claims upon this government are to

be founded on such grounds, and the histories of all our negotiations are to be searched for pretensions and admissions to enforce claims for spoliations which have been renounced for public considerations, many may be found where we have sacrificed the property of our citizens for considerations far more valuable than the revolutionary treaties of 1778, violated by one party, renounced by the other, and, in their origin, contrary to the laws of nations. If a commission is to be opened for these five millions, in this ancient case, then necessarily follow similar commissions in every case, for all the claims we have abandoned since the adoption of the Constitution. For the valuable consideration of peace with Great Britain, we abandoned our claims for her lawless outrages upon our commerce, under her orders in council; and, for the same valuable consideration, we surrendered our claims upon the Barbary Powers, for their piracies; even those who have claims rejected under the treaty of 4th of July, 1831, ratified by both nations, may come forward and plead the value of the empty pretensions set up by France, about her perpetual and exclusive commercial privileges secured forever by the 8th article of the Louisiana treaty. This perpetual obligation might be valued, perhaps, at the present price of that rich and immense country; for even that estimate would not be more extravagant than the value of the treaties of 1778, as contended for by some of the advocates of these spoliations.

Whatever may have been the sufferings and wrongs of our citizens from the lawless depredations committed on our commerce by France, it will be contrary to every rule of justice to transfer the responsibility of making indemnity to the people of the United States. Those who advocate the claims tell us of these wrongs, of captures and condemnations, seizures and confiscations; they establish these claims upon the foundation of violated treaties, and, at the same time, with singular inconsistency, deny our unquestionable right to renounce them. They ask their own government to repeal its solemn declaration of 1798, and to acknowledge to the world that they had no right to renounce our treaties of alliance and commerce; and that the United States, and not France, had violated their national obligations. They are driven to the necessity, in endeavoring to make their own government responsible, of repeating the unfounded accusations of France against the United States, of having been faithless to their pledges, and of renouncing, without cause, the solemn guaranties of a treaty. In the last extremity, in seeking an argument to support these claims, one of their ablest advocates tells us in a report made in 1830: "Our government not only failed in making that firm and vigorous demand of justice that, under other circumstances, they would have made, but bartered the indemnity that was due to us for their own exonertion from dangerous and inconvenient engagements."

The history of our negotiations, and wars, and treaties, affords a most satisfactory answer to this extraordinary charge against our government. The government of the United States has a high duty to discharge to all its citizens; and that duty should be fulfilled with perfect justice. In our external relations, involving us in restrictions and wars, and exposing a portion of our citizens to lawless depredations, we are bound to interpose and obtain redress, if we have the

power; but justice to the nation requires that our right should be unlimited, to determine how far we shall go, when we shall stop, and on what terms we shall terminate the contest, whether of restrictions or war. If, in terminating any such contest for all the claims of our citizens, we are obliged, no matter on what conditions, to sacrifice a part of them, those who suffer can have no claims upon a people who have volunteered their aid, submitted to taxation, and engaged in war to redress their wrongs. The claims of our citizens are urged in the order in which they may be classed according to the rules of public law; and those sacrificed are generally such as are the last provided for by the usages of nations. These must be set down among the losses incidental to war, and the depredations which precede it. All such fall ruinously upon many portions of the nation, both at home and abroad, and without, in our internal calamities, the remotest chance of indemnity.

In the present instance, so far from not having made a "firm and vigorous demand of justice," we have discharged all, and more than all, our obligations to every claimant for French spoliations. We engaged, in the infancy of our resources, with a powerful and warlike nation, in a contest which cost millions; we negotiated the treaty of 1800, and abandoned no claims but those which were precluded by the law of nations. France was faithless to her engagements; we negotiated another treaty in 1803, and fortunately embraced an opportunity to assume the payment, by which twenty millions of livres were recovered to satisfy our claimants—a sum which was deemed by the ministers of both nations amply sufficient to indemnify our citizens for every valid claim on France, existing in September, 1800, and depending on the rules of public law. We not only provided for claims for depredations committed in violation of the laws of nations, but for indemnities arising under voluntary contracts; in which cases the parties had no right to demand our interference.

Our government has never been more persevering in its efforts; it has never negotiated with any nation a treaty embracing so great a variety of claims; and it has never been, in any instance, so successful in recovering them. We have made war; raised armies; submitted to taxes and loans; suffered all the calamities of war at home and abroad; and we are now told that we have not "made a firm and vigorous demand of justice;" and that those who have paid the expenses of a voluntary war must indemnify others, to redress whose wrongs the war was made.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 54.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 8, 1858.—Ordered to be printed.

Mr. BIGGS made the following

REPORT.

[To accompany Bill S. 126.]

The Committee on Private Land Claims, to whom was referred the petition of Joseph Chains, executor of B. Chains, deceased, and Gad Humphreys, and Pedro Mirando, "praying the passage of a law directing the survey of their confirmed title to a tract of land, agreeably to the boundaries in the original grant to Joseph Arredondo," have had the same under consideration, and have adopted a portion of a former report on this case by the Committee on the Judiciary, and respectfully submit it as a part of their present report:

"That on the 20th of March, 1817, it appears there were granted to Joseph de la Maya Arredondo, by Joseph Coppinger, the Spanish governor of East Florida, 20,000 acres of land in Alachua country, about eighty miles distant from the city of St. Augustine, "at a place known as 'Big Hammock,' about twenty miles from the river Suwannee, westward about sixty miles from the St. John's river."

"On the 14th of October, 1819, one Andres Burgevin, a surveyor, surveyed, under this grant, a piece of land containing 20,000 acres, situated on both margins of a creek known as Alligator creek, commencing a little above the head of said creek, embracing an Indian town, distant about eighty miles from the post at Buenavista, and about forty miles to the northwest of Payne's town, disregarding, it seems, all the calls in the grant.

"The petitioners, claiming under Arredondo, impleaded the United States in the proper court of Florida, in 1834, in a suit commenced by petition, under the provisions of the act of Congress of the 23d of May, 1828, and, after trial, obtained a decree in favor of the validity of the claim, which was affirmed on error to the Supreme Court of the United States.

"It appears from an inspection of the record and proceedings in the cause, that, besides the survey of Andres Burgevin, there was admitted in evidence, on behalf of the claimants, a subsequent survey made in 1824, by Joshua A. Coffee, in conformity to the calls of the grant.

"The court in Florida adjudge and decree the claim to be valid,

and confirm it 'to the extent, for the number of acres, *and at the place* as in the grant for the said land to José de la Maya Arredondo,' and add, 'as in the certificate and plat of the same made by Don Andres Burgevin, and dated the 14th September, 1819,' and describing the land as in Burgevin's survey, instead of that made by Coffee, conformable to the calls of the grant. The surveyor of the United States, in attempting to execute the mandate of the Supreme Court, which followed this decree, discovered that Burgevin's survey did not conform to the grant or royal title, and that the land described by him in his certificate of survey could not be found at the place designated in the grant. He therefore declined to make a survey according to the terms of the grant and Coffee's survey, by which means the claimants have been deprived of the benefit of the decree.

"An effort was made, by motion to the court of Florida, to correct this most obvious mistake, thus brought to the notice of the claimants by the United States surveyor, but without success, the time for making such motions having, by the rules and practice of that court, expired.

"The affidavit of Coffee states that, in 1824, upon the application of José de la Maya Arredondo, he surveyed for him a Spanish grant made to him in the Alachua country, at a place known as Big Hammock or Big Swamp, (being called by both names,) for 20,000 acres of land, in conformity to the grant executed by the Spanish Governor Coppinger, bearing date the 20th of March, 1817; that the lands are in the county of Alachua, about 28 miles nearly south from Payne's town, on the Big prairie, and are the only lands he ever saw, or of which he has any knowledge, that conform to the calls of the grant; and that there is no other place, so far as he knows or believes, which was ever called or known by the name of *Big Hammock* or *Big Swamp;* that they lie about 80 miles from St. Augustine, and about 60 miles from Picolata, on the river St. John's, and that he made a plat of the survey and delivered it to Arredondo.

"The attention of the court, when this case was before it for adjudication, was directed rather to the validity of the grant, it is presumed, than to its location by survey, and the contradiction between the description of the calls in the grant and the actual survey by Burgevin may well have escaped its observation. The court decides the grant to be a valid one 'to the extent, for the number of acres, *and at the place* as in the grant for the said land to José de la Maya Arredondo,' to which Coffee's survey conforms, and Burgevin's does not. When a grant and survey are contradictory, the latter must yield to the former, the grant must control the survey. The deposition of Coffee fully shows that this survey is conformable to the calls in the grant."

It now also appears that within the survey thus made by Coffee numerous settlements have been made under the armed occupation law, and other rights have accrued to others which the committee are unwilling to disturb, although willing to do full justice to the petitioners by correcting the obvious mistake aforesaid.

This committee, therefore, in view of the numerous settlers as aforesaid, under the armed occupation law for Florida, and others, purchasers of the United States or entitled to pre-emption rights, on the lands included in the grant made to José de la Maya Arredondo, have

thought it best to report a bill, and recommend its passage, directing the Commissioner of the General Land Office to cause to be surveyed by the surveyor general of Florida the grant of land to José de la Maya Arredondo by the governor of East Florida, according to the calls, boundaries, and description contained in the same, and according to the survey of the same grant made by Joshua A. Coffee in 1824, and upon the return of the said survey to issue a patent to the heirs or legal representatives of the said José de la Maya Arredondo, for any portion of said grant of land which may, at the date of the survey, be vacant, and for the remainder of said grant the heirs or legal representatives of said grantee shall have the right to enter in any land office of the United States an equal quantity of any land subject to private entry, in parcels conformable to sectional divisions and subdivisions.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 55.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 8, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 128.]

The Committee on Claims, to whom was referred the petition of George Phelps, report:

This claim passed the Senate at the last session of Congress, and upon a re-examination of the case the committee are of opinion that the claim is just, and they report a bill accordingly. The facts, as stated in the report of the last session, are as follows.

The petitioner presents the following account, viz:

"THE UNITED STATES,

"*To George Phelps,* DR.

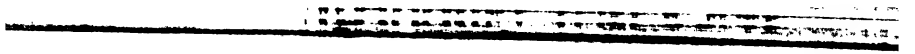
"May 1, 1846. To extra services, as messenger, rendered in the Quartermaster General's Office, War Department, at nights and Sundays after the closing of the public offices, from 1st December, 1839, to 1st July, 1846, six years and five months, at $15 per month, $1,155."

Mr. Phelps was the regular messenger in said office during the period named, at a salary of $500 a year.

In answer to inquiries addressed to him, the Quartermaster General states that the allegations contained in the memorial are true; that in consequence of the pressure of business in the office, arising out of the Indian hostilities in Florida, he was obliged to remain in the office almost every afternoon, and often until late at night, and often a portion, and sometimes the whole of Sundays; and that Mr. Phelps was obliged to remain and close the office, &c.

General Jessup adds: "The sum he asks is small compared with the amount of extra labor he has performed; he has fairly and honestly earned it."

Under the peculiar circumstances of this case, and in view of the strong endorsement of its equitable merits by the distinguished head of the Quartermaster's General Department, the committee report a bill for the payment of the sum claimed.



35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 56.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1858.—Ordered to be printed.

Mr. DURKEE made the following

REPORT.

[To accompany Bill S. 129.]

The Committee on Private Land Claims, to whom was referred the petition of F. A. Underwood and H. A. Crane, heirs of Jehu Underwood, praying confirmation of their title to a certain tract of land, have had the same under consideration, and beg leave to submit a former report of this committee as their present report in this case:

The petitioners having changed the prayer of the petition from a confirmation of their title for authority to assert their claim before the district court for the northern district of Florida, present a question differing from the original one for consideration.

The petitioners claim title to sixteen thousand acres, being a square of five miles, and being what is known as a "mill grant" in the State of Florida.

This claim, together with another claim for six hundred acres of land for cultivation, was presented to the commissioners appointed to adjust private land claims in the then Territory of Florida, who, on the 27th of September, 1825, rendered the following decision, viz:

"The board find the above to be a valid Spanish concession, the conditions to which have been complied with; but as the quantity of land is undefined by it, and the royal title confirming and ascertaining the quantity is dated after the 24th January, 1818, they report it to Congress for decision."

This decision is headed, "Jehu Underwood *vs.* The United States, for six hundred acres of land."—(See Am. State Papers, Public Lands, vol. 4, p. 484.)

But as the petition of Jehu Underwood asked for *six hundred* acres for cultivation, and the concession grants *six hundred* acres for that purpose to the petitioner, the above decision would not apply to this concession, since they say "the quantity of land is undefined," and, therefore, must have been in reference to the "mill grant."

In December, 1825, the said commissioners made a report thereon, (Am. State Papers, Public Lands, vol. 4, p. 285,) which is headed "Report No. 6."

"Register of claims derived from the Spanish government by written evidence, *undefined in quantity*, and are ascertnined to be valid, and which are recommended to Congress for confirmation."

In this report, the claim of Jehu Underwood is in the name of *John* Underwood, and it shows the claim to have been founded upon a concession dated the 20th day of May, 1805, and undefined in quantity.

The date of the mill grant is the same as that mentioned in the above report, to wit, the 20th of May, 1805, and is undefined in quantity; whilst the grant for cultivation is dated the 18th of May, 1818, and is for a *defined* quantity, to wit, six hundred acres. It is conclusive, therefore, that this decision and report is upon the claim of Jehu Underwood to the land comprised within five miles square, that being the usual grant for the erection of a mill.

There were two concessions for the erection of this mill—the first, dated May 20, 1805, and the second was in the nature of a confirmation, dated May, 16, 1818. It is to this latter date that the commissioners refer in their decision, when they say: "The royal title confirming and ascertaining the quantity is dated after January 24, 1818."

Under all the circumstances in this case, the committee, without expressing an opinion upon its merits, and in conformity to the wishes of the petitioners, report the accompanying bill, which provides that the claimants may assert their rights before the district court of the United States for the northern district of Florida.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 57.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1858.—Ordered to be printed.

Mr. EVANS made the following

REPORT.

[To accompany Bill S. 130.]

The Committee on Revolutionary Claims, to whom was referred the petition of Jennett H. McCall, only child of Col. James McCall, of the revolutionary war, having had the same under consideration, submit the following report:

The petitioner is an aged woman, eighty-six years old, and from her infancy has labored under a deformity in her feet. She is the only child and heir of James McCall, known in the history of the revolutionary war, in South Carolina and Georgia, as Colonel James McCall. It appears from the history of Georgia, and from other reliable sources, that he served with distinction and singular bravery in both of these States during a large portion of the war, and was in nearly all the battles which were fought during the invasion and possession by the British army of those States. During the greater part of the time he was only a militia officer, under the command of General Pickens, but it is believed, although no very conclusive evidence of the fact can now be obtained, that when the new organization of the army took place in the fall of 1780 he was appointed to a command in one of the three regiments ordered to be raised in South Carolina as her part of the continental army, as it is said in the history of the times; that he commanded the new levies of that State at the battle of the Cowpens, where Morgan obtained a signal victory over Tarlton.

In his accounts, copies of which have been furnished from the comptroller's office, of South Corolina, he is styled sometimes captain, and sometimes colonel. The latter title was probably a militia title, as the service was performed under General Pickens, a militia general. His rank in the new continental regiment of the State of South Carolina was probably that of a captain. Your committee do not, under the evidence of the facts of the case, feel authorized to give him any higher rank. It appears, satisfactorily, that in the discharge of his military duty he was attacked with the smallpox, of which he died in the year 1781. Your committee are therefore of opinion that the petitioner is entitled to the seven years' half pay of her father, she being at the time of his death only eleven years of age, and report a bill for that purpose.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 58.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1858.—Ordered to be printed.

Mr. SIMMONS made the following

REPORT.

[To accompany Bill S. 131.]

The Committee of Claims, to whom was referred the petition of Samuel V. Niles, report:

This claim was examined by the Committee of Claims of the last Congress, who made a favorable report thereon, accompanied by a bill which passed the Senate. The present committee concur in the report then made, as follows, viz:

"The memorialist submits the following account:

"*United States,*

"*To Samuel V. Niles,* *Dr.*

"To ninety days' service as a clerk in the General Land Office, from March 9, 1849, to June 30, 1850, being the number of Sundays between those periods, at $4 per diem.....$360 00

"Mr. Niles appears to have been appointed a temporary clerk in the General Land Office on the 9th of March, 1849, under the provisions of the act of August 26, 1842, which provides that 'no extra clerk, for copying, shall receive more than three dollars per day, or for any other service more than four dollars per day for the time actually and necessarily employed.'—(5 Statutes at Large, 526.)

"Under this provision, as appears from a letter of the late Commissioner Wilson, the accounting officers rejected the *per diem* for Sundays. This Construction of the law, the Commissioner thinks, is entirely erroneous.

"By the act of March 3, 1849, (9 Statutes at Large, 370,) the Commissioner of the General Land Office was 'authorized to continue three temporary clerks during the recess of Congress, until the patents for bounty lands shall be issued, said clerks to be paid out of the contingent fund.'

"On the 8th of March, 1849, the day preceeding the appointment of Mr. Niles, three clerks were appointed, in accordance with that pro-

vision, at the same rate of pay, (viz: four dollars per day,) and to perform like duties as those performed by Mr. Niles. These three clerks, as is stated, received the *per diem* for Sundays.

"Judge Young, then Commissioner, and who made all the appointments referred to, says: 'The facts, as to the services of Mr. Niles, are correctly set forth. I appointed him a clerk in the Land Office, at the time stated, at the same rate of compensation promised to Messrs. Whitney, Brega, and Lucas, and fully intended that no distinction should be made between them, and that he should receive the same emoluments, in every particular, granted them, including the Sunday per diem.'

"The ground of distinction taken by the Comptroller seems to have been that the three clerks named were appointed under the special provisions of the act of 1849, which relieved them from the operation of the act of 1842, and that the Commissioner had promised them the Sunday *per diem*.

"The committee are of opinion that the claimant is justly and equitably entitled to the relief asked, and report a bill accordingly."

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 59.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1858.—Ordered to be printed.

MR. FOSTER submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Thomas Johnson, praying for a change in existing laws so that all pensions for wounds or injuries received while in the line of duty in the military or naval service of the United States shall commence from the date of the disability, instead of the time of completing the testimony, respectfully report:

That, in the judgment of the committee, it is inexpedient to make the change asked for in the petition.

The committee would also report on the petition of the same Thomas Johnson, praying for arrears of pension:

That, in the opinion of the committee, the prayer of the petitioner ought not to be granted. The petitioner now receives a pension for wounds and disabilities received in the military service of the United States. Under present laws, his pension is drawn only from the time of completing his proof; he asks that he be enabled to draw it from the time of receiving his disability. Your committee have already expressed the opinion that it is inexpedient to make a change in our general law on this subject; and the committee see no reason for discriminating in favor of the petitioner. They are unanimously of opinion that the prayer of the petitioner should be denied.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 60.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1858.—Ordered to be printed.

Mr. DOUGLAS submitted the following

REPORT.

The Committee on Foreign Relations having taken into consideration the subject of that portion of the President's annual message relative to our difficulties with Paraguay, beg leave to report:

That they concur with the views expressed in the message, and recommend the passage of the joint resolution herewith submitted, and for the reasons which they beneath briefly state.

The tributaries of La Plata open a navigation for sea-going steamers for hundreds of miles through countries as rich in natural resources, and enjoying a climate as healthy and genial, as our own, and occupied in part by a people who desire to emulate our example, and have adopted a constitution upon almost the precise model of our own. The leading European nations have sent to these countries diplomats of the highest rank and ability; have negotiated treaties; penetrated their rivers with ships-of-war, and are now possessed of the larger portion of their commerce.

But to our government belongs the credit of having made the first and only exploration of the waters of those rivers, and to our citizens the credit of having sent the first commercial enterprise to the most distant and productive regions of those countries.

The Argentine Confederation and Buenos Ayres, situated at the mouth of these rivers, first opened them in eighteen hundred and fifty-three (1853) to foreign commerce; and the Confederation, in the same year, formed treaties for the navigation of those rivers and of commerce and friendship with our country.

Bolivia, situated on the head waters of those rivers, in the same year, offered special inducements to their navigation and declared many places upon their banks to be free ports. With her we have also the most favorable treaty.

Brazil has readily united in this policy; but she has permitted, at the urgent application of our ministers at her court, the exploration of those rivers within her territory. She has also declared free ports upon their waters; and in eighteen hundred and fifty-six (1856)

prises into those waters. And these enterprises have been blasted and destroyed with as little of reason or right, as have been adduced by Lopez, in his rejection of our treaty and his attack upon the Water Witch.

As early as eighteen hundred and forty-five, the government issued decrees inviting foreigners to bring to his country the implements, means and processes of stimulating the industry of the country, and promising them the same privilege extended to inventors.

Under these special encouragements, and relying upon the protection of that government while engaged in lawful enterprise, a number of American merchants sent three steamers, with a large variety of the implements of American industry, to that country, and employed there more than twenty Americans in putting them in operation. They purchased lands and rented buildings with the consent of government, established cigar factories, and the first saw-mill erected east of the Andes and south of the equator; built wharves, and commenced the steam navigation of those waters. They employed large numbers of the people of the country, teaching them the processes of manufactures. But this success being for their benefit, and for the benefit of his people, but very indirectly enhanced the wealth of Lopez. It was not in accordance with the spirit of his monopolies, though he traded with the company to some extent. He first endeavored to induce the trained employés of the country to leave their service and enter into his own. Failing in this, he published the most arbitrary decrees; among others, forbidding foreigners to meet, except for purposes of society or innocent diversion; thus, of course, putting a stop to business. Also forbidding foreigners to make contracts with peons, or servants, except upon terms notified to, and accepted by, the government—that is, himself.

He also induced the people of the city, who, until the company excited his jealousy and displeasure, had treated the Americans with that grateful kindness which was natural towards honest and well-paying employés and benefactors, to change that conduct.

The Americans were exposed to the greatest contumacy, insult, and assaults in the streets and in their houses, which were the more incessant when under the universal protection of the police.

When their enterprise was thus broken up, and themselves compelled to leave the country, Lopez refused them passports and permits for their embarkation, unless they would give up the title of their property, and not without the interposition of Commander Page would he withdraw his claim and allow them the possibility of escape to their own country.

These events occurred some five years since. Since that time, in a single year, 1854, one hundred and sixty vessels arrived at Ascencion, and Lopez is carrying on a large and increasing commerce with England; and upon some eight steamers built in England, or by English mechanics in Paraguay, and operated by English engineers, not an American flag or an American citizen, with a single exception, has been seen in Paraguay within those four years, nor, of course, in the waters of Bolivia; and, says our minister to Bolivia, "While our flag is shut out from the Paraguay and its tributaries, even from pur-

poses of explorations, by the assumptions and policy of the government of Paraguay, others are securing privileges which will operate to its exclusion for years to come."

While the conduct which we have detailed would, coming from any civilized power, be a cause of war, the feebleness of this power should not protect it from necessary measures to secure just satisfaction to the national honor and to the rights of our citizens. No necessity for the use of force will, in the opinion of the committee, ever exist; but a willingness and authority for its use must be, and then without Lopez will permit the expedition to proceed unmolested in its explorations, and our citizens to prosecute their commercial enterprises through the waters of his rivers and adjoining countries.

We therefore recommend, following precedents in our national legislation, the passage of the following resolution:

Resolved, That for the purpose of adjusting the differences between the United States and the republic of Paraguay, in connexion with the attack on the United States steamer Water Witch, and with other matters referred to in the annual message of the President, he be, and is hereby, authorized to adopt such measures and use such force as in his judgment may be necessary and advisable, in the event of a refusal of just satisfaction by the government of Paraguay.

Report of the exploration and survey of the river "La Plata" and tributaries, by Thomas J. Page, commanding United States steamer Water Witch, to the Secretary of the Navy, 1856.

WASHINGTON, D. C., *August* 4, 1856.

SIR: I have the honor to present to the department the accompanying synoptical report on the late "exploration and survey of the river La Plata and its tributaries."

To do justice to a subject so fruitful, to present clearly and comprehensively the present state and future prospects of those countries, into and through which the operations of the expedition extended—their resources, physically and commercially, to exhibit the extent to which river navigation may be carried beyond its previously supposed limit, illustrated by accurately executed charts, and to contribute to the extension of geographical knowledge in determining the positions of regions of our own continent, whose places on our maps are no less in error than we, in ignorance of both country and people, would necessarily require a greater length of time than that elapsed since the return of the Water Witch to the United States; three-fourths of which have been occupied in the settlement of purser's accounts—a duty than which none can be more embarrassing, when combined with those of an expedition such as that on which the Water Witch was sent.

The department is fully aware of the circumstances precluding the possibility of accompanying this sketch of a report with a reduced map or chart. This deficiency I hope to supply when I may be permitted to present a more detailed account of our operations

The department is also aware that a delay of several months attended the beginning of the work, after the arrival of the Water Witch at Buenos Ayres—the initial point of operations—her services having been represented as indispensable to the success of important diplomatic negotiations entered into by our representatives near the governments of Brazil and the Argentine Confederation; and that embarrassment of a grave character, involving the interposition of the Water Witch as a man-of-war in the protection of American citizens, circumscribed the action of the expedition to some extent, thereby excluding it from the exploration of the tributaries of the Paraguay and of that portion of the Parana which lies above Corrientes.

Sufficient has been accomplished, notwithstanding these obstacles, to induce the sanguine hope that through the humble means of this expedition—sent abroad solely under the authority of the department—there may result to this and those countries, an important commerce, and to science valuable contributions in both geography and natural history.

I have the honor, sir, to be, very respectfully, your obedient servant,

THOMAS J. PAGE,
Commander.

Hon. J. C. DOBBIN,
Secretary of the Navy.

WASHINGTON, *August* 4, 1856.

SIR: I have the honor to submit to the department the following report, setting forth the progress and extent of exploration accomplished by the United States steamer Water Witch, during her recent cruise, under instructions from the honorable the Secretary of the Navy, to "survey and explore the river La Plata and its tributaries." In addition to which instructions, I was accredited by the President, Mr. Fillmore, jointly with our ministers near the governments of Brazil and the Argentine Confederation, or individually, to make a treaty of commerce and navigation with the republic of Paraguay. When I arrived at Buenos Ayres, I was informeed by our minister, Mr. Pendleton, that he had some months previously accepted the invitation of Sir Charles Hotham, the British minister, to accompany him to Paraguay, and at the same time, with the ministers of France and Sardinia, had concluded a treaty with the President of that republic.

These instructions constituted my guide in the prosecution of the work assigned me, and I hope it will be seen that they have been carried out in the fullest extent of which the means at my disposal, and the circumstances attending the work, would admit. The department having been informed, from time to time, of the progress of the expedition, it may not be advisable to withhold this preliminary report, for the length of time which a more detailed account would render necessary. This can be made at some subsequent period, when the results of the work may be more clearly and minutely set forth, and the good deducible therefrom more satisfactorily demonstrated.

The Water Witch, a steamer of about four hundred tons burden, with a draught of nine feet, sailed from Norfolk, on the 8th of February, 1853. Although not adapted in all respects for the duty assigned her, she nevertheless was better suited to it than any other vessel at that time available; and, with an enlightened zeal for the promotion of commerce and the advancement of science, the department availed itself of the limited means thus at its disposal, to make to those objects a contribution, which I trust will be found eminently worthy of its efforts and in fulfillment of its anticipations. The seal to the new waters which the Water Witch was destined to explore, and which had remained closed for so many years to navigation, under the peculiar government of Buenos Ayres, was broken by the liberal and enlightened policy of General Justo J. Urquiza, provisional director of the Argentine Confederation, and by him the rivers were declared "open" to commerce. The government of the United States promptly availed itself of this privilege, and has now the satisfaction of demonstrating to the world the navigability of some waters previously unknown, and of others to a far greater extent than had at any time previously been imagined.

On the arrival of the Water Witch at Rio de Janeiro, I took occasion to represent, through the United States legation, to the government of Brazil the object of the expedition, for the purpose of enlisting

in its behalf the favorable consideration of that government, knowing that it held territory on both banks of the river Paraguay, through which I hoped to be able to extend the exploration.

The following correspondence will show the result of my effort at that time. My letter was addressed to Mr. Ferdinand Coxe, secretary of legation, Mr. Schenck being temporarily absent.

UNITED STATES STEAMER WATER WITCH,
Rio de Janeiro, April 26, 1853.

SIR: The expedition on which the Water Witch has been ordered by the President of the United States, having purely for its object the advancement of commerce and promotion of science, objects interesting to all civilized nations, but more especially so to those on whose borders, or into whose territories its operations may extend, I wish, through the legation of the United States, to call the attention of the Brazilian government to this expedition, with the hope that through its enlightened policy it may be disposed to forward the work with which I am entrusted, whensoever its operations may border upon, or extend into the territory of Brazil.

Facilities might be afforded and difficulties removed by the simple act of approval and commendation on the part of Brazil, of which her frontier and inland posts could be notified in advance of the expedition.

You are too well aware of the good likely to result from the work we have in hand to require any argument from me. I therefore leave the matter in your hands, with the hope that your efforts to advance the aim and object I have in view may succeed to our entire satisfaction.

THOMAS J. PAGE,
Lieutenant Commanding.

MR. FERDINAND COXE,
Secretary of Legation, Rio de Janeiro.

LEGATION OF THE UNITED STATES,
Rio de Janeiro, April, 26, 1853.

SIR: In the absence of Mr. Schenck, I have the honor to enclose to your excellency a copy of a letter just received from Lieutenant Thomas Page, commanding the United States steamer Water Witch, now in this port. This officer has been ordered by the President of the United States upon the highly interesting and important duty of exploring and surveying all the rivers running into the La Plata; and it is not doubted that the results of the expedition will be of the highest importance to the commercial and scientific world, and that Brazil, as bordering upon, and at some points entirely enclosing the rivers it is

proposed to ascend, will not be the nation least benefitted by the operations of the expedition.

Your excellency will perceive, from Lieutenant Page's letter, that he asks from the imperial government such assistance in the object he has in view as may be given, by orders of friendly coöperation, to the imperial officers and agents he may meet when his operations may border upon, or extend into the territory of Brazil.

Your excellency knows too well what these orders should be, and to whom they should be given, for me to do more than communicate Lieutenant Page's request, as I am confident that the enlightened views of your excellency will lead you to further the aim and object of the expedition by all the means in your excellency's power.

The Water Witch will leave here for Monte Video and Buenos Ayres on the 30th instant, and I will have much pleasure in forwarding any communication which your excellency may desire to send to those points; and I avail myself of the occasion to renew to your excellency the assurance of my high respect and distinguished consideration.

FERDINAND COXE,
Secretary of Legation.

To H. E. PAULINO JOSÉ SOARES DE SOUZA,
Of the Council of H. M. the Emperor,
Minister and Secretary of State for Foreign Affairs.

[Translation.]

FOREIGN OFFICE,
Rio de Janeiro, May 4, 1853.

I received, after some delay, the note which, in the absence of Mr. Schenck, was addressed to me by Mr. Ferdinand Coxe, secretary of legation, under date of the 26th of April last, enclosing a copy of a letter he had received from Lieut. Thomas J. Page, who having been charged with the duty of exploring the different rivers, affluents to "La Plata," asked from the imperial government all the assistance in its power, by means of orders and recommendations, for a friendly coöperation on the part of the respective authorities of the empire. In reply I have to say to Mr. Coxe, that the imperial government having opened to foreign commerce, in the river Paraguay, the port of Albuquerque, it makes no objection to Lieut. Page carrying his explorations to that point, and will send the necessary orders to the president of the province of Matto Grosso, and other imperial agents, that they may give to Lieut. Page all coöperation in their power; but the imperial government not having yet opened to foreign nations other ports above Albuquerque, and not having yet agreed as to the navigation of these interior rivers with the nations on their banks, (*Naçõcs riberinhas,*) it cannot permit foreign vessels to enter them,

and thus establish an example and precedent which might be prejudicial to the empire, as the right to the navigation of those rivers has not been settled.

I avail myself of this occasion to renew to Mr. Coxe the assurance of my esteem and consideration.

PAULINO JOSÉ SOAREZ DE SOUZA.

Mr. FERDINAND COXE,
Secretary of Legation, &c.

This unlooked for opposition to the exploration of waters, so entirely unknown to the civilized world, was subsequently removed by the imperial government, and permission granted the Water Witch to explore such tributaries of the Paraguay river as were under the jurisdiction of Brazil.

The success of this application should be attributed to the zeal and ability with which it was advocated by our minister, Mr. Schenck, and Mr. Trusdale; notwithstanding the confident belief I entertained —judging from the profound learning of his imperial majesty, and his devotion to the sciences—that all opposition would eventually be removed.

Political questions of old date, relative to territorial limits, had made the two governments of Brazil and Paraguay jealous of their respective rights to the navigation of the Paraguay river. The latter government claimed exclusive jurisdiction, and asserted the right to prohibit the ascent of the Paraguay above Asuncion, the capital, to all nations; while the former claimed a way by water to her interior province, "Matto Grosso." The navigation of the river was denied to Brazil with the hope of forcing his imperial majesty to terms on the question of limits. Angry discussions on these points, for many years, had finally terminated in the threatening spectacle of a formidable Brazilian squadron arrested in its ascent of the Paraguay by a battery of one hundred guns, erected on the banks of that river. The two nations, brought thus in juxta position at the cannon's mouth, concluded it the more prudent plan to keep the ammunition in the magazines, and settle their differences with the pen instead of the sword. Negotiations were consequently resumed, and resulted (as we learn since leaving the waters of "La Plata") in the adjustment of the question of limits, and the opening of the Paraguay to the Brazilian flag.

The interesting details involved in these matters cannot be embraced in this circumscribed report.

On the arrival of the Water Witch at Buenos Ayres, the point in the river La Plata where the survey and exploration were begun, and in consequence of the very probable necessity for a place of refuge for Americans—arising from the impending attack upon the city from the besieging force under General Urquiza—I received the following letter from our chargé d'affaires, Mr. Pendleton, to which I felt every obligation to yield a willing assent:

LEGATION OF THE UNITED STATES,
Buenos Ayres, July 3, 1853.

MY DEAR SIR: I am aware of your great anxiety to proceed up the river, in pursuance of the objects of the expedition under your command, and it is therefore with very great reluctance that I take leave to suggest to you that it is very desirable you should remain a few days longer in the port of Buenos Ayres.

Events of importance and of a decisive character in respect to the condition of this city and province are, in my opinion, at hand.

No American man-of-war is in the river; Captain Downing, with the Jamestown, having suddenly, and without any correspondence or consultation with me on the subject, cleared out, as I have informally learned, to proceed to Rio de Janeiro, for the alleged purpose of having his ship caulked.

I would not make this request but for the strongest conviction on my own part that the events referred to are almost certain, and for the further fact that I am urged to do so by many American citizens resident in Buenos Ayres, and that I have also the concurrence of Mr. Schenck, who desires me to say so to you.

JOHN PENDLETON.

Captain THOMAS K. PAGE,
Commanding U. S. Steamer Water Witch.

Happily the necessity for the presence of the Water Witch did not actually arise; but that request was followed by another, which caused a yet longer detention before Buenos Ayres, to which it did not become me to turn a deaf ear. The following letter shows the circumstances attending the request, and the importance attached to the participation of the Water Witch in the arrangements made by the foreign representatives:

LEGATION OF THE UNITED STATES,
Buenos Ayres, July 10, 1853.

SIR: We are engaged in some confidential negotiations at present, which are likely to result in an accommodation of the difficulties existing at Buenos Ayres between the parties to the civil war. There is no absolute certainty as to the event, but there is a sufficient probability of success to justify us in requesting that you will not leave the place for a few days. We make this request because it is a part of the present plan that the foreign men-of-war in port may convey the provisional director and his escort to the neighboring port of Gualaguaychu.

As important objects connected with our duties here are likely to be attained more readily by the participation of the United States flag in this transaction, we think it very important you should remain, there being no other United States vessel in port.

ROBERT C. SCHENCK,
JOHN PENDLETON.

Captain THOMAS PAGE,
United States Steamer Water Witch.

The negotiations alluded to terminating in an accommodation of the difficulties and in an abandonment of the siege by the forces of the Argentine Confederation under the command of General Urquiza—in conformity to the request of our minister—the provisional director, together with his suite and military escort, was received on board the Water Witch and transported to the province of Entre Rios.

In the adjustment of these grave difficulties between the Argentine Confederation on the one side and Buenos Ayres on the other, the agency of our representatives, in co-operation with those of England and France, was of a character highly influential; and in the official communication of the participation of the Water Witch in the above transaction, made by Mr. Schenck to the State Department, her services were characterized on this and subsequent occasions as very material to the success of their negotiations with the Argentine government. Neither were they of less importance in having laid the foundation of good relations, which were always manifested in the facilities offered our work, whensoever we were operating within the jurisdiction of the confederation.

The appreciation of the expedition by the President (Urquiza) may be judged of by the following letter, sent to me after its objects had been made known to him:

[Translation.]

"Long live the Argentine Confederation.

"The Provisional Director of the Argentine Confederation.

"The American steamer-of-war Water Witch, from the United States of North America, having arrived in the river La Plata, and her captain, Thomas J. Page, having expressed his desire to navigate the rivers of the Argentine Confederation, for scientific purposes, I enjoin and command the authorities of the riverine provinces that they will not present any impediment to his exploration, but afford him all the assistance he may need or require.

"JUSTO J. URQUIZA.

"SAN JOSÉ DE FLORES, *May* 27, 1853."

The principal affluents of the river La Plata—the Parana and Uruguay, with their tributaries—constituted the field of our operations; a field which, although vast in extent and partially closed to exploration, will, I trust, be found not to have been labored in in vain. Hidden and unknown, as have been for ages past the rich resources of those countries, watered by the above rivers, a condition not to be wondered at when we take into consideration the rule to which they have been subjected, it is not anticipating too much when we look for an abundant harvest as the result of our labors; a harvest not only of material value to the commercial community, but of some interest to the scientific. To demonstrate this position, which I assume for the late exploration of the tributaries of La Plata, does not lie within the limits of this report. It is a task which I hope to undertake and execute, though plainly and simply, in such manner as will exhibit the

field that is open to commercial enterprise, to the mechanical arts, to agriculture, and to scientific pursuits in geography and natural history.

At the distance of a few miles below the confluence of the Parana and Uruguay, and where they form the river La Plata, is the island "Martin Garcia," whose commanding position is such as to have made it the subject-matter of treaty stipulations, by which its occupation or possession should, under no circumstances, authorize or give the power of obstructing the free navigation of those rivers. The importance of its position, however, has been much diminished by the discovery, in the late work of the Water Witch, of a channel heretofore unknown, whose depth of water is two feet greater than that of the old channel, and whose course forms the common boundary between two foreign states, Buenos Ayres and the Banda Oriental; thus depriving this island not only of its importance as a military station, but of the political character it has hitherto maintained, of holding the command of the channel of the Uruguay, and, consequently, of the Parana also. This may be assumed as the initial point of the exploration and survey; and, as the Parana river presented the more extended and important field of operation, the labors of the expedition were first directed to that channel.

In explaining the manner in which the work was conducted, the department will perceive that the best means of which it admitted were resorted to for the attainment of accuracy; and these were sufficient for the accomplishment of the object in view—the construction of charts from a "running survey," based upon, and checked by, daily astronomical observations.

The chronometers, five in number, had been selected by the superintendent of the "Naval Observatory" because of their excellence, and it is gratifying to know that they sustained this character throughout our work as well as could have been anticipated. Their errors and rates were well determined previously to entering upon the work, in conducting which observations of the sun and stars were daily made, whensoever the weather would permit, for the determining of latitude, longitude, and variation. The distances between the points of observation were arrived at by reference to a uniform number of revolutions of the engine, which, from experience, was ascertained to be equal to a close approximation to a certain distance. Whatsoever erroneous estimate may thus have been made, it could not extend beyond the point of observation, so that there was always a check upon any error of judgment or irregularity in the speed of the steamer. There were, at all times, when the steamer was under way, two officers at work, exclusive of myself; one with the chart before him, projecting the course and distance, the width and depth of the river, with the topography on either bank; while the other recorded in the note book the same, together with all such remarks as were calculated to represent more clearly any peculiar characteristic. Soundings were taken at intervals of five minutes, when in deep water, but when in shoal water, as often as they could be had. The astronomical observations and their reductions were, at different periods of the work, conducted by Acting Masters Welch, Powell, Murdaugh, and Henry,

to whom, in connexion with Lieutenant Jeffers, who joined the expedition after Mr. Welsh's detachment, because of ill health, the success of our work is mainly due, as having "borne the burden and heat of the day."

The Parana discharges its immense volume of water into "La Plata," by the confluence of three of its principal branches with the Uraguay, and by a number of other branches of less importance communicating directly with "La Plata," thus forming a delta of vast extent. The various branches susceptible of navigation were explored and surveyed.

The river was ascended through its main channel, in the Water Witch, up to the confluence of the Paraguay, about 800 miles from Buenos Ayres, when this latter river was ascended above that point about 900 miles up to a Brazilian military post called "Corumba;" beyond which the expedition, at this time, was prohibited from proceeding by the Brazilian government, for the reasons hereinbefore indicated.

The point of junction of these two rivers is about twenty-two miles above Corrientes, the principal town of the province of that name. Subsequently to the period now alluded to, the further exploration of the Parana—that portion of it yet unkown—was attempted; but the progress of the steamer was arrested by an assumption of unwarrantable exclusive jurisdiction by the government of Paraguay over waters where the right was shared and the jurisdiction concurrent with the Argentine Confederation. The right to explore the river throughout the extent of the jurisdiction of the Argentine Confederation was vested in the Water Witch by an injunction from the provisional director, General Urquiza, on its citizens to afford the expedition every facility, aid and assistance; and on the other hand, there rested on the Water Witch the obligation to carry out the grant that had been made by this liberal and enlightened act.

The progress of the vessel, however, in her ascent of the river, while carrying out the instructions of the department, and while acting not only by the permission but by the expressed desire of the Argentine Confederation, was arrested by the commission of an outrage on the part of the Paraguay government, which I sought in vain to avenge. The means were ample and available; the mode and manner of using them clearly demonstrated; the authority full and unquestioned, and resting in the hands of one whose rank and position in the command of a squadron should be a sufficient guarantee that the honor of his country's flag is in safe keeping when entrusted to him. The department having been fully advised of all the circumstances connected with this transaction, I abstain from giving, in this report, a detailed statement of what I must ever consider a wrong, an outrage unavenged. It becomes me to state, however, in this place, that the unwarrantable course pursued towards the Water Witch was induced by the exasperated state of feeling on the part of President Lopez, of Paraguay, arising from the fact that, in the discharge, not only of the obligation imposed upon me by instructions, but by my duty as an officer, I had removed, by means of the Water Witch, from under his oppressive rule a number of American citizens, who,

located in that country for the transaction of commercial and other business, and having come under the ban of his displeasure, were treated in a manner not to be tolerated.

The time has elapsed when the indignity offered the flag should have been avenged, but I trust it has not passed when the government of Paraguay shall be made responsible for the pecuniary losses sustained by those American citizens, and caused by an exercise of the most tyranical power.

In ascending the river Parana up to the confluence of the Paraguay, the territory on both sides belongs to the Argentine Confederation, with the exception of a portion of the right bank—about 145 miles in extent—which pertains to the State of Buenos Ayres. The provinces bordering the river are, Entre Rios and Corrientes on the left, and Santa Fé on the right bank; the northern portion of this latter province extending into "El Gran Chaco"—the home, and almost boundless domain of various tribes of inhospitable Indians. This is an extent of country embracing not less than 200,000 square miles; and notwithstanding it has been partitioned out by imaginary limits among the different states surrounding it—the Argentine Confederation, Bolivia, Paraguay and Brazil—the Indian yet roams that vast domain in undisturbed possession. He sallies forth at times to rob the white man, and when pursued finds refuge in the immensity of this region, which he calls his own. The extent of pampa country—similar to our prairie—is well watered by streams whose navigability, in part, has been proved, and whose banks are well studded with timber and wood for fuel. The fertility of the soil is unsurpassed, and the grass, in luxuriance unequalled, affords rich pasture for innumerable herds of cattle, horses, sheep, &c.

On the opposite bank, in the provinces of Entre Rios and Corrientes, we find a sparse, but hospitable population, inhabiting a country rich in natural resources—save those of minerals—soil fertile, and susceptible of producing in great abundance the various grain crops, cotton, tobacco, and every variety of vegetable. From the interior of these provinces small rivers empty into the Parana, whose navigability, at certain seasons of the year, would afford the medium of easy transportation to market for all the products of the country.

The city of Parana, the seat of government, is one of the most important towns of Entre Rios, although not the most populous. In Santa Fé, the province immediately opposite, the chief towns are Santa Fé and Rosario—the latter being the principal port of entry of the confederation. The population of this place has increased, within the past three years, in a ratio truly surprising, showing the effect of confidence in the recently established popular form of government.

Added to this may be mentioned, as an active stimulus to this influx of population into Rosario, the anticipated construction of the recently projected railroad from that place to Cordova. The route has been surveyed by one of our own countrymen, Mr. Allen Campbell, whose reputation in South America as an engineer is of the highest order, and whose favorable decision as to its practicability is quite sufficient to ensure the connecting of the western with the eastern part of the confederation by this iron bond.

In the prosecution of this survey it became necessary for Mr. Campbell to make a very thorough exploration of the river "Tercero," which, under the name of Carcarañia, empties into the Parana, a short distance north of Rosario. To him I am indebted for information relative to this river of such a character as to preclude the necessity, on our part, of a closer examination than we had already made.

He says, "The Tercero is not navigable in its natural state, neither is it susceptible of being made so by artificial means, at least for any practical or useful purpose."

The construction of this road between Rosario and Cordova, together with the navigation of the river Salado, will contribute vastly to the commercial prosperity of the confederation, and not less to the perpetuity of its political existence.

There are many points in which the Parana and Paraguay assimilate to our western waters. Their course is from north to south. They have their periodical rise and fall, caused not by the melting of snow and ice, which influence the latter, but by the rainy and dry seasons of the tropical region of Brazil, in which they take their rise. The average rise of the Parana is 12 feet, which begins in December, reaches its maximum in February and March, and will be found at its lowest state in August and September. In the month of October there is a partial rise of six feet, called the "*repunta*," which continues not longer than one month, when it subsides again to its low state.

The Water Witch, with a draught varying from 8 to 9 feet, ascended the river during the month of September, when it was at its lowest state, and experienced no difficulty from the want of a sufficient depth of water. Its channel is subject to changes during the season of increase. This, however, occasions no difficulty in the navigation of the river, because the vigilant pilot soon learns, from experience in river navigation, to discern, by inspection, the course of the main channel. The velocity of the current averages 2½ miles the hour. Owing to the almost numberless islands with which this river is studded, some of them many miles in extent, its width, in parts, from mainland to mainland, is as much as 15 miles; but the width of the river proper varies from one-fourth to one mile. Its banks, at the distance of 300 miles from its mouth, towards its source, are well covered with the best quality of wood for steamers; and they maintain this character throughout. Many of the islands are sufficiently elevated to escape inundation, and offer an inexhaustibly fertile soil for cultivation, especially in rice.

On entering the Paraguay river, at the point spoken of, we have Paraguay on the left bank, and still "El Gran Chaco" on the right. This river differs from the Parana in several particulars. Its period of rising is generally the reverse; it contains but few islands; is confined between narrow limits; is more easy of navigation, because less obstructed by shoals; and the course of its channel is less variable; its width from one-eighth to three-fourths of a mile; its velocity two miles per hour; and its rise is from twelve to fifteen feet. In October it attains its maximum, and in February its minimum state. From its mouth to Asuncion, (the capital,) a distance of 250 miles, there were found no less than twenty feet of water, when the river had

fallen about two feet. This depth of water remained unchanged for the distance of several hundred miles above Asuncion, and the Water Witch had ascended the Paraguay seven hundred miles above this place ere she found less than twelve feet. At this time the river had fallen several feet.

The admirable adaptation of these rivers to steam navigation cannot but forcibly strike the most casual observer.

There are no obstructions from fallen trees, neither shoals nor rocks, to endanger navigation. At suitable points—in fact at every point, in Paraguay particularly—an abundance of the best wood may be procured immediately on the banks; and, when populated, no difficulty will be found in obtaining a supply of it prepared for immediate use. By experiment carefully made, one cord of the Paraguay wood was ascertained to be equal, in the production of steam, to a ton of the best anthracite coal.

The left bank of the river, up to the distance of 450 miles from Asuncion, is populated; but more and more sparsely as the northern frontier is approached. Between the most northern Paraguayan and the most southern Brazilian settlements, a distance of 250 miles, there is no habitation of civilized man. Various tribes of Indians were met with at different points, with some of whom we "held a talk," and parted on such friendly terms, because of the numerous presents we made them in trinkets and tobacco, that they became somewhat troublesome, following us along the banks on horseback, desirous that we should repeat the visit on shore.

The "cacique" and one of his tribe were induced to come on board the vessel. They manifested no astonishment, notwithstanding the novelty of all they saw, a steamer, an object to them incomprehensible, and the first to plough the upper waters of the Paraguay.

Between the town of Santa Fé and Fort Coimbra, the most southern Brazilian military station and settlement, a distance by the river of about 1,400 miles, there is not the residence of one civilized man on the "Chaco" side. In 1855, a colony of Frenchmen was established, however, a short distance above Asuncion, under the auspices of the Paraguay government; but ere many months had elapsed, it fell into disrepute with President Lopez, and was abandoned. The apprehension of inroads from the Indians, up to this time, so effectually excluded all settlement in the "Chaco," that, to the Paraguayans, the river which intervenes forms an impassable barrier, and the country on its opposite side a *"terra incognita."* From Coimbra we ascended the river to Corumba, a distance of 120 miles. Intermediate the two places is the small village of Albuquerque. We had now reached the northern limit, Corumba, in latitude 19° south, to which our exploration of the Paraguay was circumscribed by the Brazilian government, having passed through 15½ degrees of latitude, in a direction generally north, and arrived at a point in the interior of South America, very little short of 2,000 miles from the ocean by the course of the river. Judging from what I saw and heard, I have no doubt but that the Water Witch, at the season of high water, could have ascended 300 miles further. Up to the point reached by the Water Witch, steamers of five feet draught could ascend at all sea-

sons of the year; and with a more suitable draught of three or four feet, they could doubtless reach "Cuyaba," the capital of the rich province of "Matto Grosso," the frontier state of the empire of Brazil, bordering on the Paraguay. This place, with a population of eight or ten thousand souls, will present an important market to commerce, should Brazil abandon her exclusive policy in river navigation, and, with Paraguay, declare the navigation of the Paraguay river open to all commercial flags.

The most direct communication held by this place with other parts of the world is through Rio de Janeiro, over mountains, passable only by means of mules, and through a distance of 1,200 miles. The Paraguay is now made known to the world as navigable into the very heart of her rich frontier province; and Brazil, having become awakened to the vast importance of such a channel of communication, has, I learn since leaving the waters of the La Plata, entered into a treaty with Paraguay for the right to the navigation of that part of the river passing through her territory, or, more properly, claimed by her.

This is a striking instance of the important results which will eventually flow from this exploration, aud evinces the high appreciation entertained by Brazil of the developments arising from the ascent of the Water Witch into the interior of a country never before known to be accessible to steam navigation. The arrival of the Water Witch at Coimbra wae hailed with lively enthusiasm, as the forerunner of a new era in the prosperity of that region; as the pioneer of its commercial intercourse with the world; "as an event worthy of commemoration by the erection of a lasting monument."

As this was the first fruit of the expedition, it necessarily awakened to a lively sense of its importance the slumbering energies of Brazil, the country most deeply interested in the facts established.

It becomes a pleasing duty, at this part of the report, to make my acknowledgements to the "comandantes" of Coimbra and Corumba for the very polite and hospitable reception extended to us. The whole district is under the command of the comandante of Coimbra, Antonia Peixoto de Azevido Ravim Capite, who controls an institution established at Albuquerque, which not only does great credit to the government of his Imperial Majesty in its efforts to civilize and Christianize the Indians, but trains up, by its benignant tuition, the rising generation, which will, in time to come, form a formidable force, competent to protect and defend her distant frontier from hostile invasion.

The policy of Brazil towards these Indian tribes is both lenient and humane, and well worthy the imitation of any government under whose guardian care these children of the forest may fall.

I have stated that permission to ascend the Paraguay river beyond Corumba had been refused. I was, consequently, forced to abandon, for the present, its further exploration, hoping that on a more mature consideration of my application the government of Brazil would yield its opposition. Permission *was* subsequently granted to explore all the tributaries of the Paraguay within the jurisdiction of Brazil; and, while anxiously expected, it reached me just on the eve of the rupture of my friendly relations with President Lopez, under whose displeasure

the further exploration of all the waters of the Paraguay, or the entry within the limits of her territory, was prohibited by a formal proclamation. Our work was thus excluded from the waters of Paraguay that had not been explored, and, by the outrage before mentioned, prohibited, also, from a further exploration of the Parana. Previously to this prohibition, the exploration had extended a short distance up the Vermejo, one of the most important tributaries of the Paraguay, to which, by one of those arbitrary acts incident to a consciousness of power, President Lopez asserted exclusive jurisdiction, based upon a treaty *not* concluded, but *rejected* by the constituted authority. Concurrent jurisdiction is claimed by the Argentine Confederation with Bolivia as a question not admissible of discussion; and she even goes further, in the extension of her claims to a large portion of the "Chaco," many miles north of the Vermejo; thus sharing the "Gran Chaco" with Bolivia, and excluding Paraguay altogether from any right to territory on the right bank of that river.

Paraguay, however, asserts her claim, not by right of possession, but through a sufficient force stationed near the mouth of the river, by which she controls its navigation and that of its tributaries.

It had been my aim and object to continue the exploration of the Vermejo, and attempt that of the Pilcomayo—a river of importance to Bolivia, and also to the commercial world—if practicable of navigation; but the same proclamation which closed the Paraguay to further exploration closed this river also.

The time is not far distant when all such prohibitions will be removed; when, under the march of intelligence, exploration, and its attendant developments, will open the road to commerce, to the advancement of education, and to the establishment of the most amicable relations among the distant nations of the earth.

The president of Paraguay, with intelligence far in advance of what could be expected in a country whose existence should date from 1840, and the people of Paraguay—than whom there are none more hospitable or kind—are alive to the importance of commerce, and aware that by it, alone, can the budding resources of their beautiful and rich country become thoroughly matured and developed.

The country of Paraguay presents a field for enterprise of which other portions of the world are profoundly ignorant. Its population, secluded from the world until the year 1840, were ignorant of their own hidden treasures, not of diamonds and gold, but of the more substantial, the more reliable products of the soil; which, aided by man's partial exertions, would yield a most abundant harvest. One of her natural products—the "yerba"—has, up to this time, been the chief source of profit. But, independent of these, as well as of the wealth centered in the herds of cattle which graze upon her extensive plains, it is the hidden treasure of her soil, it is agriculture—the basis of commerce—which she must cherish as the means by which she is to reach her destiny. Her mines of iron are of a superior quality, and although but partially tested, give evidence of a supply far exceeding her own and the combined wants of the neighboring States.

At the distance of 38 miles below Coimbra, and in latitude 20° 10′

south, the river "Bahia Negra" empties into the Paraguay, on the right bank. The entrance to the river, and the immediately adjoining country constitute the entire territory which is yielded to Bolivia by the governments of Brazil and Paraguay; their claims, however unfounded, covering the remainder of the right bank of the Paraguay from the mouth of the Vermejo. The Water Witch entered the "Bahia Negra," and after ascending about 36 miles found the river closed by an impenetrable growth of grass, notwithstanding the depth of the water was nine feet. The banks of the river here became lost and blended with the vast sea of grass rising above the water. The high lands of Bolivia, from whence this river rises, were too distant to be seen. Nothing, save the mountains of Coimbra and Albuquerque, distant 40 miles, interrupted the boundless plain of grass seemingly floating on the water. Not only was our progress in the steamer arrested, but the grass so closed in the channel of the river as to render its further exploration impracticable with the boats. At the season of low water, it is confidently believed that an opening of this river might be effected into a region of Bolivia called "Otuquis," which would give that state the nearest approach to waters navigable at all seasons, and thus render accessible to market the fairest portion of a country now shut out from the world.

The opening of such communication which must naturally follow this exploration, I confidently look forward to, at no distant day, as one of its most valuable results. Public attention had already become awakened to the fact, ere the work had been completed, that this region of Bolivia was accessible to navigation.

Before leaving the waters of the Paraguay river, a very thorough exploration of the country of Paraguay was made. This was performed principally by the aid of Lieutenants Powell and Henry, who by means of the sextant, pocket chronometer and artificial horizon, determined the position in latitude and longitude of many important points. By this work, we are enabled to contribute to geographical science a degree of accuracy in position which this country does not enjoy at the present time. The agricultural districts, as well as those of the natural products, the "yerba," &c., were explored, and the mode of gathering and curing the "tea of Paraguay" accurately observed and noted by Lieutenant Powell. The interesting establishments of the Jesuits, under whose benignant rule the "Guarany" Indians were redeemed from a state of barbarism to civilization and Christianity, were visited, and their geographical positions determined. These establishments still retain in remarkable preservation evidences of the wonderful zeal, perseverance, skill and ability of their founders, in the structure, carving and painting of their churches. When it is remembered what the condition of the country was at the period of the erection of these buildings, with all that pertained to them; that it was a wilderness; that its inhabitants were savages; that out of this wilderness, and by these savages, these truly magnificent edifices were erected, and at such a distance from any civilized nation, one is lost in wonder and admiration at the will, the nerve, the zeal to attempt, and the intellect and skill to achieve such master works.

To give a faint idea of the course pursued by the order of Jesuits,

from the period of their landing to that of their expulsion, and of the results of their labors, which are so intimately interwoven, not only with the history of Paraguay, but with that of the Argentine Confederation, also, would lead me far beyond the limits of this report. I must therefore relinquish it here, for a more appropriate time and place.

Notwithstanding the narrow limits within which it is now kept, the cultivation of the soil was found further advanced in Paraguay than in the *riverine* provinces of the confederation.

The population may truly be said to be an agricultural people. The policy of Francia threw them upon their own labor, and made them dependent upon themselves for all articles of consumption. It drove them to the cultivation of the soil, at least to such an extent as to supply their individual wants; but it does not seem to have awakened or elicited either skill or ingenuity. With the least imaginable labor the earth brought forth her increase; and, secluded from the world as these people were by this restrictive policy, their infantile state had but few wants, and those were scantily supplied.

Time has changed for the better. Strangers are admitted into the country, the people are alive to progress, and the beneficial effects of that forerunner of all prosperity and intelligence, commerce, begin to be manifested in all their pursuits.

There is no trait of character more characteristic of the people of Paraguay than their hospitality to strangers. When we journeyed from one section of the country to another, whether on the frontier or in more settled parts, our movements were not only attended with perfect security, but our reception always with marked kindness. This country is open to the commerce of the United States. It presents a field in common with the Argentine Confederation, which, in its abundant harvest, should not be allowed to fall into other hands. It is peculiarly our own. The similarity in the character of the rivers of South America to those of our own country, and the experience we have had in the construction of boats adapted to such navigation, render our builders and our navigators more competent to supply and run such boats than any other persons on the globe. It has been said that the commerce of these inland countries—alluding especially to Paraguay—can never be carried on directly with either the United States or Europe under their own flags, because vessels suited to the sea could not navigate these interior waters. In refutation of this idea—an idea not to be very much wondered at when we consider the ignorance that prevailed relative to their capacity—I need simply state the fact that the Water Witch, a "sea going steamer," a man-of-war, though small, of nine feet draught, penetrated into the interior of South America to the distance, from the ocean by the river, of 2,000 miles. Ocean steamers of *four times* her tonnage may ascend these rivers nine-tenths of this distance at *all seasons* of the year, as their draught need not exceed six feet.

Previously to leaving the waters of the Paraguay, two of its small tributaries were explored and surveyed, the "Jejui" and "Confuso." The former in the small steamer by Lieutenant Ammen, and the latter by Lieutenant Murdaugh. The "Jejui" rises in the mountains

of Paraguay, and forms the channel by which much of the "yerba" is conveyed into the main river, and thence to Asuncion. The "Confuso," less important at this time, and requiring much labor to render it navigable, or at all available, rises in the unknown regions of the "Chaco," and empties into the Paraguay about 60 miles above Asuncion.

The commerce of Paraguay in it extent and progress may be judged of from the following statement taken from authentic records. The increase in exports will exhibit strikingly the benefits resulting from the free navigation of the Parana and Paraguay—an increase produced solely by the native population, there having been no immigration into the country, within the period embraced, calculated to augment the amount of its products.

PARAGUAY.

Return of goods into Asuncion during 1854.

[These import duties are 20 per cent. on articles of necessity, and 25 per cent. on articles of luxury. These duties are levied on a lower valuation than the real value of the goods, so that the total amount of importation may be considered to represent $700,000.]

Grey shirtings and drills	$112,559
Bleached shirtings and drills	41,645
Prints and muslins	103,878
Shawls and handkerchiefs	51,740
Ticking and cotton pantaloon stuff	12,794
Twill	585
Thread	14,799
Bobbinet	1,559
Book muslin	4,543
Socks and stockings	400
Woolen goods	68,697
Silk goods	13,922
Ribbons	4,012
Hats	10,282
Ladies' dresses	3,096
Umbrellas	330
Boots and shoes	2,498
Hardware	32,470
Wine and spirits	7,295
Books	2,034
Chairs	360
Salt	12,437
Sugar	1,521
Flour	1,235
Medicines	1,125
Glass	539

Fire-works	$703
Red beads	1,232
Unenumerated articles	77,233
Total amount in 1854	585,493
Amount imported in 1853	406,688
Amount imported in 1852	540,150
Amount of import duties in 1854	123,289
Amount of import duties in 1853	56,564
Amount of import duties in 1852	123,276

PARAGUAY.

Exports from Asuncion during 1854.

[The number of vessels that arrived in Asuncion in 1854 was 160, with about 8,000 tons, of which 2 were British, 31 Paraguayan, 116 Argentine, and 11 Oriental. The export duty is 10 per cent. on almost every article, except starch, which pays 6 per cent. Of the exports of 1854, 82,882 arrobas of yerba, 2,074 pesadas of raw hides, 52,670 varas of timber, and 311 arrobas of horse hair, paid no duty, being exported or sold by the government. The value of these articles is about $300,000, leaving only $477,800 worth of produce exported by the trade, making a balance against the market of $222,500, assuming $700,000 as the actual value of the imports.]

Yerba, 85,676 arrobas*	$282,489
Tobacco, 103,868 arrobas	148,164
Cigars, 5,264 thousands	12,568
Timber, 80,313 varas	49,050
Raw hides, 38,957 pesadas	156,287
Tanned hides, 15,566 hides	66,650
Horse hair, 3,205 arrobas	9,833
Tan bark, 15,920 arrobas	2,719
Starch, 23,325 arrobas	10,596
Oranges, 266,893 almudas	11,288
Sweetmeats, 29,588 arrobas	19,086
Molasses, 30,668 asumbras	1,279
Sugar, 7 arrobas	20
Sugar cane, 35,600 cañas	53
Rum, 12,534 frascos	3,168
Maize, (corn,) 29,922 almudas	597
Rice, 54 arrobas	17
Beans, 3,394 arrobas	984
Meal mandioca, 706 arrobas	179
Ground nuts, 6,264 arrobas	1,164
Algarobilla, 775 arrobas	96
Paddles, 196 dozens	472

* Paraguayan measure—Almuda = 12 quarts dry measure. Arroba = 25 pounds. Frasco = 3 quarts liquid measure. Asumbra = 34 pounds.

Bamboos, 3,724 dozens	$235
Lime, 200 fanegas (12 almudas)	500
Earthenware	63
Total amount of exports in 1854	777,557
Total amount of exports in 1853	691,932
Total amount of exports in 1852	474,499
Total amount of exports in 1851	341,380
Amount of export duties in 1854	40,150
Amount of export duties in 1853	36,319
Amount of export duties in 1852	29,200
Amount of export duties in 1851	10,970

In addition to the articles of export here enumerated, there are other natural products—iron, dye-stuffs, medicinal plants, timber of superior quality for ship building and cabinet work, India rubber, &c., which will vastly augment the present amount of exports, so soon as the petty restrictions now imposed on commerce shall have been removed, a more liberal system adopted for the encouragement of immigration, and a more positive guarantee given for the security of private property. Advancements have been made towards the attainment of these objects since the death of the dictator, Francia, but their accomplishment has not as yet been achieved. It is but the work of time, and that not very distant. In the progress which has marked the policy of the Paraguayan government during the past three or four years, the influence of commerce, stimulated by the opening of the navigation of those rivers, and guarantied by treaty stipulations, may be distinctly traced. Foreign enterprise embarked in the trade, and the construction of a small steamboat by the expedition, (the first ever launched into the waters of the Paraguay,) demonstrated to the government its resources in part, and at the same time its want of the ability, skill and enterprise to develop them.

These lessons were not lost on President Lopez. He purchased two steamers, and more recently built one on the banks of the Paraguay, near Asuncion, entirely of the wood of the country. For purposes of ship building there are woods in Paraguay of superior quality, the most indestructible of which is the "lapacho."

The following list embraces the names of the woods, of which specimens were sent home from Paraguay; among them are some of very beautiful color and fine grain:

Lapacho,	Esencia,
Palo de Rosa,	Timboyta,
Morosimo,	Curupayna—3 kinds,
Mataojo,	Curupay,
Aya,	Yrapipe,
Urunday,	Palo Blanco,
Algarroba,	Arihan,
Guayaya,	Guayacan,
Laurel Negra,	Espina de Corona,

Laurel Amarillo,	Palo Santo, (Lignum Vitæ,)
Tatara,	Palma,
Quebracho Colorado,	Namguapere.
Quebracho Blanco,	

In extending the exploration into the provinces of Corrientes and Entre Rios, those two riverine states of the Argentine Confederation lying east of the Parana, every facility was offered by the enlightened governor of Corrientes, and by the authorities of every district of the two provinces into which we entered. Politeness and hospitality marked the conduct of the people of the country throughout.

Cultivation is on a limited scale. Grazing of cattle and horses is the principal source of profit to the "estanciero," while "jerked beef," hides and tallow constitute the chief articles of export trade. Quantities of the hard woods are sawed and shipped from Corrientes, where there were being erected steam saw-mills at the time of this exploration.

The northern part of the province of Corrientes is not adapted to cultivation, but suited to grazing. It is but little above the level of the river, and intersected in parts by small lagoons, which, forming a continuous chain, linked together by narrow creeks, present quite a picturesque appearance. In the northwest part of the province is the mysterious lake of "Ibira," around which tradition has thrown a veil of religious awe, preventing all intrusion upon its stillness by the surrounding people. The islands with which it is studded are said by some to have been resorted to by the Jesuit fathers for the performance of some religious ceremony, and by others as the depositories of treasure, in which excursions none were permitted to participate but the fathers themselves. The real obstacle to a better knowledge of the lake and its islands arises, doubtless, from the difficulty of penetrating the extensive fields of grass which skirt the margin. It is the headwaters of many small rivers, the principal of which are the Corrientes, emptying into the Parana, and the Miriña into the Uruguay; both susceptible of navigation at certain seasons of the year. Of the two the Corrientes is the more important, not only because of its coursing through that portion of the province best suited to both agriculture and grazing, but because it empties into a river navigable at all times from their confluence to "La Plata."

The province of Entre Rios, joined to Corrientes on its south, though limited in extent, is more largely engaged in the rearing of cattle, horses and mules, than any other of the confederation. Its soil is fertile, and the best evidence of the excellence of its grass is to be seen in the superiority of its horses, cattle and sheep. The stranger is forcibly struck with the absence of all cultivation; for nature seems to have done all that man could require. Here, the pioneer in agriculture has not to encounter the task of clearing his land of huge and lofty trees, as with us; he has simply to turn up the virgin soil to the sun, plant his seed, and, with the smallest amount of labor, reap an abundant harvest. The cultivation of wheat in this province, though on a limited scale, has tested successfully the capability of both soil and climate. The channels of communication possessed by these two provinces for the transportation of produce

to market are unequalled. The two united, from the figure of a parallelogram—almost entirely surrounded by the Parana and Uruguay—and from their interior flow navigable streams, affording the means of communication at almost all points. Blessed by nature, as these countries are, there are wanting what alone can develop their resources—laboring hands, an agricultural population. Those now in power, whose efforts are for the advancement of their common country, are fully alive to this fact, and the most effective measures have been taken to induce the immigration of this class of people. Under the guarantee of stability of government, which it now seems to be the determination of the States to maintain, the flood tide of immigration will set stronger and stronger, as it has already begun, until the demands of the country are satisfied.

Suppose the resources of this confederation alone fully developed, who can calculate, at this time, the product that would arise from them? And, what is worthy of serious thought and high consideration, who can estimate the future importance of the commerce which this development would create?

The river Uruguay, which bounds Entre Rios and Corrientes on the east, and separates those two provinces from the Banda Oriental and Brazil, is navigable at all times for the distance of 250 miles, up to the "Salto Grande." Here there is a ledge of rocks stretching across the river, and from its extending up the stream has more the character of rapids than of a fall. For a very short time in the year, during the month of October, the river rises to the height of from fifteen to twenty feet, forming over the fall a rapid current, but of sufficient depth to allow of its ascent, under an extraordinary steam pressure. Beyond the "Salto," the river again becomes navigable for small vessels of five feet to the distance of 100 to 200 miles. This "Salto" is, nevertheless, a barrier to the navigation of the river above, the period of high water being of so short duration. When the population of the country above shall have increased, and have felt the want of water transportation, they will see the propriety and practicability of ascending and descending this Salto by means of locks.

The scenery on this river, especially on the left bank—the Banda Oriental—far surpasses that of either the Parana or Paraguay. At the distance of 100 miles above its mouth, the scenery on the right bank, Entre Rios, changes from the flat wooded to the undulating grassy, with skirts of wood here and there fringing its margin. But the left bank, the Banda Oriental, is beautiful throughout. The land is higher above the river, more rolling, with wooded ridges and grassy hill-sides, gently descending into meadows of surpassing verdure. And yet this beautiful, fertile country, exclusive of its principal town, Mount Video, of 80,000 inhabitants, presents the sad spectacle of a waste. Civil wars have desolated the land, and even the city itself has become a battle field. There remains no longer in the country the inducements to revolution, viz: cattle; but in the city there still remains the custom-house, with its rich store of bonded goods, for the protection of which often has it become necessary for foreign men-of-war to interpose.

The resources of the Banda Oriental, notwithstanding its having a

market of its own, are as little developed as the most remote northwest provinces of the Argentine Confederation; and this is because men are not willing to work when they have no guarantee of security for the products of their labor. With the security of peace, this State would soon assume a very different aspect.

The progress of the expedition having been thus far imperfectly sketched through the rivers Parana, Paraguay, Uruguay, and to a short extent into such of their tributaries as were open to it, extending also through those States and provinces east of the rivers, it remains to describe its operations in the connecting of those with the river "La Plata;" in the exploration of the river "Salado; and in the examination of parts of the provinces of Santa Fé, Cordova, Santiago del Estero, Tucuman, and Salta, whose future interests are immediately involved in the navigation of the Salado. The importance of this river to the western and northwestern provinces of the confederation—assuming its navigability established—would occur forcibly even to the most casual observer, who should cast an eye over the map purporting to lay down its course. The circumstances under which the exploration of the Salado was attempted were altogether discouraging. We were told by those who were supposed to be the best informed, that we might possibly ascend about forty-five miles; by some that it was no river; and by others, that it took its rise in some of the numerous lakes commonly found in that region of country; from which may be gathered some idea as to the extent of information obtainable, on this and other subjects, during the prosecution of the work.

To Lieutenant Jeffers, assisted by Lieutenant Henry, the charge of the Water Witch, was committed, with instructions to connect the work of "La Plata" with its tributaries, by a detailed and minute survey. This work thoroughly executed resulted in the discovery, as has already been stated, of a new channel connecting "La Plata" with the "Uruguay" and "Parana," and passing east of the island "Martin Garcia." It deprives this island of its commanding military position, and gives to the Banda Oriental concurrent jurisdiction with the state of Buenos Ayres over the entrance to the tributaries of "La Plata," a right exclusively claimed heretofore by the latter.

While thus employed, the Water Witch performed most important services in rescuing the Spanish man-of-war schooner "Cartaginera" from a position in which she must inevitably have become a wreck had not such timely aid been rendered.

Having chartered a small steamer of ninety feet length, twenty-six inches draught, we entered the Salado with the following officers:

Thomas J. Page, lieutenant commanding.
William H. Murdaugh, lieutenant and acting master.
William L. Powell, lieutenant and acting master.
Robert Carter, assistant surgeon.
T. B. C. Stump, assistant engineer,

and a crew of twenty-two men.

The country through which we were about to pass was in the undisturbed possession of tribes of Indians, known to be very savage. It became necessary, therefore, to be prepared to make a defence against their attacks.

This river takes its rise in the western Cordilleras of the province of Salta, and after a very tortuous course, under the general direction of southeast, empties into the Parana at the town of Santa Fé, and offers to the still further western provinces, "Catamarca" and "Rioja," the most direct and cheapest channel of communication. Its ascent was begun at the season of low water, in July and August; notwithstanding which the river was in its lower part unusually full, but falling. After reaching the distance of three hundred and sixty miles from its mouth, it was apparent that in this part of the river the water had fallen from twelve to fifteen feet, and was still falling slowly. I continued on, until finding but two and a half feet water determined to return and proceed by land to the upper waters; thence to descend the river, if it were possible to procure or construct the means of so doing. In our progress with the steamer we had ascended the river but a short distance when we reached what may be called the frontier military post of Santa Fé, although far within her limits, located here as a check against the further encroachments of the Indians upon the estancias in the immediate vicinity of the town of Santa Fé.

The flat lands immediately adjacent the river extend from one to about five miles in width, forming a "river bottom," well wooded and densely covered with grass; from which the more elevated land, skirted with timber of superior quality, rises gradually to a level with the surrounding *pampa*. The growth on the river bottom and immediately on the banks is of excellent quality as fuel for steamers, and may be had in great abundance. In its green state we experienced no difficulty in keeping up the requisite quantity of steam.

The character of the country is very much the same as that throughout the "Gran Chaco," an alluvial formation with the deposits for ages of decayed vegetation, reproducing from year to year the most luxuriant growth of grass.

One cannot pass along this river without giving utterance to the regret that such beautiful localities should be unoccupied by the hospitable dwelling, or that nature's bountiful bestowal should remain a blank, a wilderness, as little appreciated by the savage man of the pampa as by the wild beast of the forest.

We had progressed several hundred miles beyond any habitation and entered some distance into the country possessed by the Indians, but encountered none of them. A herd of wild horses was seen, containing more than one hundred. The country in the vicinity abounds in animals, such as the tiger, deer, and wild goat; the lagoons in ducks, geese, and swans; and the river in fish of great variety.

Specimens of these were secured whensoever it was possible to do so.

Having ascended as far as was practicable with the steamer at that season, as has been stated, I returned to Santa Fé, despatched Mr. Powell in charge of her to survey the "Paranacito" and "Pabon," branches of the Parana, and proceeded by land, accompanied by Mr. Murdaugh and one of our most trusty sailors, to the upper waters of the Salado.

In facilitating our movements Señor Cullen, governor of Santa Fé, promptly put at our service all the requisite means at his disposal.

As we were about to pass into the province and town of Cordova, by a route very little frequented because of the Indians, the governor proffered us the protection of a military escort. The insecurity in travelling on this route made such precaution absolutely necessary. It was therefore thankfully received.

Our road through Cordova was not the most direct route to Santiago, the point aimed at, from which we were again to enter the Salado; but the only route along which the means of travel could be procured, after leaving the province of Santa Fé.

To give an idea of the endurance of the horses of the Argentine Confederation, I should state that for five days consecutively I rode, between "sunrise and sunset," the distance of one hundred and five miles, changing horses at the "postas," distant one from the other from twelve to twenty-four miles. On one occasion Mr. Murdaugh and myself, accompanied by our escort, rode one hundred and twenty miles in twenty hours, not changing horses; and on the same horses continued travelling during the two succeeding days, resting and feeding the horses on the natural grass of the pampa during each night The horses during the time of travelling were never permitted to drink.

Arrived at Santiago, after a journey of six hundred miles, we were most kindly received by the governor, Don Manuel Taboada, and became the guests of his house. His hospitality and kindness, as well as the very polite attention of his whole family and friends, deserve our most grateful thanks. Having learned the object of our visit, he desired not only to furnish a boat manned, and associate with us his brother, but also to accompany us himself by land, with an escort of eighty soldiers as a protection against the Indians, who were known to be at different points of the river in considerable numbers. All was soon made ready; the boat was transported by oxen a distance of forty miles to the point at which we wished to enter the river, and launched upon the waters of the Salado under the national flag of the confederation, presenting a scene as interesting as novel to the surrounding spectators.

Don Antonio Taboada accompanied us in the boat. His good company, perseverance and zeal to carry out our plans tended in no small degree to their success.

While descending in this boat, and before leaving the inhabited part of the river—for it must be remembered that the part unknown and in the possession of the Indians is about four hundred miles intermediate with the settlements of Santa Fé and those of Santiago—some of the people on the river side, through fear or ignorance of what our boat might be, freighted with human beings, would make most precipitate flight into the woods, imagining it some demon garb assumed by their ever persecuting enemy, the Indians. A detailed account of the exploration, accompanied by the various incidents to which it gave rise, however interesting it might be, would protract this report beyond its prescribed limits.

The descent of the river was continued with difficulty, at times, arising from overhanging trees, and those fallen from the banks; and having proceeded for many days, occasionally encountering obstacles of this kind, I found that the delay in our progress was unnecessarily

great, inasmuch as the character of the river was fully comprehended, and its obstructions clearly understood, I therefore determined to proceed by land, with the party attending us; seeing that, from the nature of the country, a sufficienty thorough examination of the river could be made in that way. The country presented one uninterrupted plain, with this river meandering through it, its course, width and depth having the uniformity of an artificial canal, marked out by the growth of the woods skirting its banks, and sufficiently open at every point to admit of approach and of travel along its margin.

More than two months had elapsed since the ascent of the lower part of the river in the small steamer; and already, by the early setting in of the rainy season in the province of Santiago, had the river become swollen to such an extent that at no point from whence we abandoned the boat was there found less than six feet water; showing that the low state of the river throughout the distance of seven hundred miles from its mouth continued not longer than two months of that year, 1855. In this whole extent, from Santa Fé to a point, "Sandia Paso," thirty-three miles below "Bracho," the eastern frontier post of Santiago, there are no obstacles to safe navigation, even at this time, save here and there a fallen tree, at intervals of great distances, which could be removed by an ordinary boat's crew. At Bracho, the river becomes merged in a lake covered with a growth of flag, which, at the low state of the river only, would present a formidable obstacle to navigation, as it is at this time, but which could be easily removed.

These obstacles will doubtless be removed by the general government. In the province of Santiago alone, where they exist, the enthusiasm of the people is so great that with the ordinary ration, and a daily allowance of tobacco and maté, the work could be accomplished in one season, and the navigation made uninterrupted for six hundred miles by the shortest land route from Santa Fé. Throughout the whole extent there is not an obstruction which may not be removed by manual labor, without the cost of machinery, or calling into requisition the science of engineering. There are neither rocks nor shoals.

Having become satisfied of the practicability of rendering the Salado navigable during the season of high water, from Santa Fé to the distance of nine hundred miles by the river—six hundred by the route now travelled and four hundred in a right line, up to within a short distance of the point at which our boat was launched—the exploration was extended through the provinces Tucuman and Salta, up to the capital of the latter, under the same name, by one route, and on our return by another; Mr. Murdaugh coursing along the river, descending it from a point called Mira Flores to that at which we entered the river in the boat, whilst I pursued another route. The result of his examination of this part of the river may be given in the words of his journal:

"There would be some difficulty in the navigation from Mira Flores to San Miguel, because of the rapidity of the current arising from the fall in the level of the land. It is also interrupted in that part by sand banks. From San Miguel the river becomes confined within high banks, well wooded, level country, but little current,

width greater than below, perfectly clear of obstructions, well inhabited, country beautiful, but little cultivation—some wheat."

He speaks in pleasing terms of the hospitality extended him by the inhabitants of the country. Although so far removed from the usually travelled route, they had heard of the success attending the exploration of this river; that of a truth it mingled its waters with those of the Parana, and contributed to swell La Plata; a truth which filled them with the most lively anticipations of the future.

This additional distance extends the navigation of the Salado to about one hundred and fifty miles, by land, above the point at which the boat was launched; thereby giving to Tucuman and Salta the benefits of river transportation for their merchandize and produce. In these benefits the more western provinces, Catamarca and Rioja, will also participate, although not so directly.

Their mines, by this mode of transportation, will no longer remain valueless; they will contribute their share—amidst the developed resources of the country—to swell the bulk of exportation in products for which, at this time, and under the existing state of things, there are no means of transportation.

In claiming for this expedition the discovery of the navigability of the Salado, I am well aware that there has been a tradition that the Salado was navigable up to Matara. The absence of all confidence in this idea, however, was so prevalent—I may say universal—that it was at no time followed up so as to establish its truth. On the contrary, when the attempt was first made to test it, the reports which reached us were very discouraging.

While descending the Salado we encountered hostile Indians at two different points. They were attacked by our escort, and, considering the odds so much in our favor, they defended themselves most gallantly, and at times, after their usual mode of fighting, would make a dash with considerable effect. They were mounted and armed with the lance. Their expertness with this weapon, and their management of the horse, are scarcely equalled by the "Gaucho," their civilized enemy. There were recovered from them two or three hundred head of cattle and as many horses, which they had stolen but a few days previously from the "estancias" and poor people living along the Salado.

The privation and exposure we experienced throughout this exploration, not only of the Salado, but of the country somewhat in the interior of the provinces, were calculated to try our physical endurance, and test our zeal and energies even in a cause of such deep interest and importance. We nevertheless found ourselves relieved from the fatigues of the day, after a night spent upon the soft grass of the *pampa*, with the canopy of heaven our vaulted roof. The rain would descend with tropical force, but our India rubber ponchos seldom failed to secure us refreshing sleep. The dawn would find us, though wet, prepared for the toils of the day. The life was one of health and vigor. Never were our physical energies more nerved to meet and overcome toil and privation. Weeks and months thus passed away; and had the time been doubled, and the exposure greater, so

happy a termination of our labors would have amply compensated for all such endurance.

The exposure incident to works of this character is calculated generally, to give a correct idea of the health or sickness of the country in which they are prosecuted. And such was the unusual absence of sickness among both officers and crew of the Water Witch, notwithstanding the exposure to which we were subjected, that we are constrained to pronounce Paraguay and those provinces of the Argentine Confederation which constituted the field of our operations, the healthiest region we have ever visited. Its proximity to the tropics, and physical character, judging from analogy, might, on a superficial knowledge of it, convey a very different idea.

In giving this as an opinion, we do not judge solely from the effects of the climate on our exploring party, but from facts indisputable. In Paraguay there is no practicing physician. Nature provides a "remedio" for every disease in the medical plants which are to be found throughout the country; and few there are who do not know the peculiar virtue of each one. Among the botanical specimens, collected in Paraguay alone, there are sixty-six varieties of medicinal plants, and yet the collection is incomplete in this branch. It is not an uncommon occurrence to meet with aged persons who will say they have never been sick. In the province of Santiago del Estero there is no professional physician. One will often hear the remark, "there has never occurred in Santiago a case of intermittent fever;" and so far as our experience goes, it tends to verify the statement. It was in this province that we tested our own powers of physical endurance, and at the same time the health of the climate, by the exposure to which we were subjected both by day and night. During the greater portion of the year the country people sleep in the open air, never "in doors" unless driven in by rain.

This condition of climate prevails, although in a less degree, throughout the confederation, and notwithstanding the limited demand for medical services, it is by no means supplied in the cities of Cordova, Tucuman, &c., where the practitioner would have his surgical skill as often called into requisition as his practice of medicine, and were the people, entertaining a just appreciation of such services, are punctual and liberal in rewarding them.

Before leaving this imperfect sketch of our work in this region of country, I should not only do violence to our feelings, but injustice to others, were I not to make a formal acknowledgement of our high appreciation of the hospitality and kindness extended to us, not only by persons of the highest official position, as governors of the provinces of Santa Fé, Santiago, Tucuman, and Salta, but by gentlemen and families in their private circles, whose attentions will ever be recalled with emotions of the most pleasing character.

The following extracts from the government papers will, in part, show the enthusiasm felt in some sections of the confederation on the subject of the navigation of the Salado, and in truth they may be looked upon as expressing the feelings of the whole country:

[Translated from the "Argentino Independiente" of Tucuman, of October 3, 1855.]

"We have among us two distinguished guests, Captain Page and Lieutenant Murdaugh, of the North American navy. We hasten to salute and welcome these gentlemen, for whom Tucuman entertains the most lively sympathies; it being well known that these gentlemen, with a degree of intelligence, energy and perserverance beyond all praise, are engaged in the exploration of our interior rivers. This enterprise could not have been entrusted to a more suitable person than Captain Page. It appears that no difficulties can deter him from accomplishing his undertakings. He has already achieved the triumph and glory of being the first who has penetrated and subjugated by steam our deserts. We hope that powerful agent of modern civilization will soon directly influence the advancement and civilization of this republic.

"The government, duly appreciating the important services which these distinguished officers of the American navy confer on the country, and regarding the recommendations from the national government, has in honor of these gentlemen given a splendid banquet, at which were assembled our most distinguished citizens," &c., &c.

[From the "Argentino Independiente" of November 10, 1855.]

"According to the information concerning the 'Rio Salado' which has been given to us, in various extracts of letters forwarded for publication by the minister of government, Don José Posse, we can say that the navigability of the Salado is now an established fact. We are lost in wonder and admiration when we consider this achievement, and the revolution socially and commercially it is destined to work out in the condition of these provinces. The rich and varied products of Tucuman will no longer be confined within her own borders, but will be transported, by means of the Salado, to seek a market in other provinces of the confederation, or in some foreign land," &c., &c.

[From the "Comercio de Salta."]

"We announce, with pleasure, the arrival in this capital of Captain Page and Lieutenant Murdaugh, of the United States navy.

"It would be unnatural in a Tucumano not to entertain towards these gentlemen the warmest sympathies. The service they have rendered to the country in revealing to us the existence of a navigable river in that region which, until recently, we regarded only as a desert, to be feared because of its savage tribes, is inappreciable. Our mind, pre-occupied with the political events which, during forty years, have rent our bosom, appears not to comprehend, even now, the importance of this species of conquest. There remains no doubt that the Salado is navigable up to within the province of Salta.

"The illustrious North American government, to which we are beholden for this discovery, can always rely on the gratitude of loyal 'Argentinos;' and Captain Page and Lieutenant Murdaugh, explorers on the part of that government, leave with us remembrances that will immortalize their names. To the perseverance and energy of

these intelligent naval officers are due, in an eminent degree, the advantages which the western and northwestern provinces of the confederation are about to realize from the navigation of the Salado," &c., &c.

These extracts are sufficient to show the appreciation of our labors in the Argentine Confederation.

The collections in natural history made by the officers alone, under discouraging circumstances, will, I hope, be found worthy of presentation to the scientific world. The officers generally, as is stated, aided in the collection; but the services of Dr. Carter, in this branch of our work, contributed most materially to its success. In devoting a few words to this collection, I will use the language of one of our most distinguished naturalists, as expressed in a note to me.

The collections in natural history, obtained by the Water Witch, are very comprehensive in character, embracing specimens of quadrupeds, birds, reptiles, fishes, insects, crustacea, shells, minerals, plants, living and dead, with seeds and sections of wood, fossil remains of fishes, &c. The aggregate is one of great magnitude, and may safely be said to constitute, by far, the largest collection ever made in South America by an American expedition. Notwithstanding the difficulties of preservation consequent upon the hot, moist climate, the specimens brought home are all in the finest possible condition. The collection is especially rich in the larger birds of Paraguay: in the hawks, eagles, ducks, geese, mackaws, curassous, &c., several of which are believed to be new to science, and few of them previously brought to the United States.

"Some interesting quadrupeds were also procured, as the jagua, the nutria, so well known in the fur trade, the capybara, the armadillo, various species of deer, monkeys, &c. Specimens of the two first mentioned animals were brought home alive, and sent to the government Asylum for the Insane. The collections of reptiles and fishes of the region explored are believed to be much more complete than those of any previous expedition."

They embrace specimens of nearly all the various serpents of Paraguay. Among them are some formidable species of the families of the rattlesnake and copperhead.

"The fishes are in very great variety, and will illustrate the formidable and rapacious character of all the inhabitants of the fresh waters of South America, in being universally provided with sharp cutting teeth. A considerable proportion of all these are believed to be undescribed, as also of the invertebratæ."

I regret to say that several of the living animals previously sent home from Paraguay, as the tapir, capybara, coatimundi, with two or three birds, either died on the way or after their arrival in the United States. It was found almost impossible to preserve, in a proper condition, dried plants, although a large number was collected; also, seeds, and some living plants, some of which are now growing. Particular attention was paid to those of special interest.

The large collection of woods of Paraguay, in sections, will be found not without interest.

In concluding this synopsis of the report, which, with the permis-

sion of the department, I hope to make more in detail at as early a period as possible, I will state, in a few words, the extent of survey and exploration accomplished by the expedition in the tributaries of La Plata, and in the countries adjacent, or immediately interested in their navigation.

The survey embraced an extent of river course of 3,600 miles, and of actual exploration, or travel by land, of 4,400 miles. These waters are open to the American flag and their territory to American enterprise.

He who established, at the downfall of Rosas, that free and independent government, the Argentine Confederation, based upon principles identical with those of our own Constitution, has unsealed the mouths of these rivers, opened them to commerce, and holds out inducements to immigration on terms of the most enlightened and liberal character.

The progress made in those countries, even during the short period of the operations of this expedition—the constitutional government having been established in 1853—was too manifest to escape the most uninterested observer; an advance towards good government, a progress intellectually and morally, in three years far exceeding what had been accomplished during three hundred previously; demonstrating practically the wonderful blessings of peace and good government over civil wars and despotism.

No portion of South America has so largely occupied the attention of European statesmen, within the last twenty years, as the states of La Plata; and in my opinion of the immense resources of this country are more than sustained by those of some of the most eminent men of Europe.

With the navigability of her great interior water courses once established, La Plata will have received the development of centuries, and we may safely anticipate the tide of immigration which will set into those countries; and without being visionary, we foresee a future development, which in the history of the world will only be surpassed by the growth of the United States of North America. In offering to immigration and to trade, the temptations of a country, even richer in all natural, mineral, pastoral and agricultural resources than the great basins of the Oronoco and Amazon, she offers a climate genial and unrivalled for its salubrity; and a population sufficiently large, and advanced in civility, to form, at once, the basis of extensive commercial operations.

Brossard, a French diplomatist, in a recent work upon La Plata, says, in writing on the immigration from France into that country: "In 1838 the number of French registered at the French consulate at Montevideo amounted to five thousand, at the end of 1842 it had increased to nine thousand; but it must be remembered that this register embraced only adults, and the best authorities compute the whole number, inclusive of women and children, at not less than fifteen thousand. During the first months of the year 1841 there arrived at Montevideo more than thirty-five hundred persons from the Basque provinces, and it is estimated that not less than 28,245 European immigrants arrived from 1838 to the close of 1841."

It must be remembered that this tide of immigration flowed in when these countries were distracted by civil wars and revolutions, which have given place to more settled governments and commercial treaties with the United States and some of the great powers of Europe; treaties which have opened to the world countries less known than Japan, and offering a much more extended and varied field for commercial enterprise. Some of these countries have, by recent acts—by donations of land, &c.—offered great inducements to immigration; indeed, they have entered into arrangements with agents to promote the transportation of immigrants upon the most favorable terms.

We can only imagine what they may become when the results of our explorations are made known.

We, as before stated, have ascertained and established the navigability of the river Salado to the distance of 800 miles—never before passed over by the white man—and have, for the first time, exhibited upon the waters the great lever of modern civilization—steam. It waters a country unrivalled in the beauty of its scenery, the salubrity of its climate, and the riches of its natural resources; and brings into communication with the Atlantic some of the richest and most populous provinces—Santiago del Estero, Tucuman, Salta, Jujui, &c.—whose products have heretofore been conveyed to the port of Rosario by ox wagons, occupying a period of ten months to go and return, but which can now by boats reach the same port in 15 days, and a return cargo of merchandise be made in 25.

Even the Indians, who have heretofore made hostile descents upon the few settlements along its banks, might be made, by kind and judicious treatment, powerful agents in developing the agricultural resources of the country.

On some of the "estancias" of the Argentine Confederation this experiment has been made with success.

Our explorations upon the Paraguay have extended seven hundred miles beyond any previous navigation, and our labors have been made the "subject" of a highly complimentary notice before the royal geographical society, by Lord Ellesmere and Sir Charles Lyell.

A part of the ancient empire of the Incas—the state of Bolivia—has vital interest in the results of this exploration. Possessing but one indifferent port on the Pacific, and this separated by the Cordilleras of the Andes and the desert of Atacama, eighty miles wide, from the interior, it is only by her rivers communicating with the Paraguay that the wealth of her mines and the fruits of her forests, teeming with many of the products of the Indies, can be brought into the trade of the Atlantic.

From being one of the best populated, as well as the richest, of the South American States, a field is at once opened for the manufactures of Europe and the United States. At simply a nominal expense, when we look to the vastness of the interest involved, might she effect this outlet into the Paraguay, through the river Otuquis, now obstructed by a dense growth of grass. This outlet is practicable; and when civil wars shall have ceased to distract the nation, Bolivia will find, in the improvement of the navigation of this river into Bahia Negra, an enterprise worthy of her whole energies; for, by its accom-

plishment, she forms a channel of communication with the Paraguay, practicable at all seasons of the year.

Paraguay promises a lucrative commerce to any people that may become engaged in it—producing tobacco of a very superior quality, hides, yerba, cotton, medicinal plants, dye stuffs, and a large quantity of woods for ship building and ornamental purposes; but above all, so superior is the quality of her tobacco, to which both climate and soil seem peculiarly adapted, that it would become an article of extensive trade. She would seek eagerly, in return, salt and manufactured goods.

In ascending the Paraguay two thousand miles from the Atlantic, in an ocean steamer, a man-of-war, we have reached the frontiers of some of the richest provinces of Brazil—provinces whose products had before no outlets but the port of Rio Janeiro—a port reached by a laborious, dangerous and costly land travel, over mountain paths, inaccessible but to the sure-footed mule.

Brossard says that those who regard the future development of these countries as chimerical, must only glance at the prosperity of the United States of North America, which, fifty years past, were more thinly populated, and possessed a climate less genial and salubrious, and a soil less rich in its varied products.

It may seem a strange assertion, and yet it is true, that the history and resources of La Plata are better known to Europeans than to the inhabitants of the United States; and the statesmen of the leading powers of Europe have for many years made this portion of South America an object of active interest. Europe has been represented there by her ablest diplomatists—Walewski, Lord Howden, Baron Gros, Mr. Gore, Sir Charles Hotham, M. St. George, &c., have successively, for the last ten years, represented their governments there.

Even Austria, though not a maritime power, was the first European government to acknowledge the independence of Paraguay. Proverbially sagacious and far seeing as her statesmen are known to be, they have doubtless discovered in La Plata a healthful outlet for the disaffected population of the Lombardo-Venetian states.

M. Guizot comprehended equally the importance of opening the countries of this great basin to European enterprise. In a despatch to M. de Saint Aulaire, then the French ambassador at London, he says, in writing of the intervention of France and England in the affairs of La Plata: "We must ask, as an accessory consequence of our intervention, the application of the principles established by the congress of Vienna for the free navigation of rivers," in relation to those, which, flowing from the frontiers of Brazil and Paraguay, throw themselves into the Atlantic.

M. Thiers, in a speech before the legislative assembly of France, delivered January 6, 1850, says of the commerce and brilliant future of La Plata: "Your trade with the two Americas is enormous; larger than with any other region of the globe. It represents nearly five hundred millions, of which North America absorbs the greater part. Of these five hundred millions, North America receives three hundred and fifty; South America one hundred and fifty, which is not quite a third; but you deceive yourselves strangely if you appreciate this

hundred and fifty millions of commerce only by the cypher by which it is represented. The trade of North America, which apparently presents such great advantages, and which you guard with such solicitude, has two great drawbacks: first, it is exposed to the tariff, which the manufacturing classes (*parti industriel*) demand. * Secondly, they have the advantage of you in navigation. * * *

"Now let us look at South America: you there trade with nations whose growth surpasses even that of North America. The census of North America represents the population as doubling itself nearly in twenty years. I can prove to you that there are states in South America where the population has tripled in twelve years.

"The trade of Brazil has advanced in ten years from a little less than thirty to sixty millions; the trade of La Plata has advanced in twelve years from between four and five millions to forty millions.

"You may judge from this of the progress of trade in those countries.

"Again: I am profoundly convinced that without this war, which your energy can alone terminate, the trade of South America—and I speak without exaggeration—will reach to two hundred millions.

"Again: you encounter there no manufacturing party, (*parti industriel.*) She cannot menace you for a long period with the industrial rivalry which now threatens you in the United States. The people of South America are at best an agricultural people; and lastly, you have the certainty that your flag will there develop itself immensely; and there is only that region for its development, (*et il n'y a plus que cette region pour le developper.*"

In a memorial addressed to the King of Prussia, advocating the establishment of a line of steamers with South America, the views of Thiers, for France, are applied to Germany. The writers say: "Brazil will never become a manufacturing country, and the products of Germany will there, *in all time, or forever*, find an assured outlet or market. After Brazil, the states of the Rio de la Plata merit the greatest attention among the countries of South America, and an extended commerce with Brazil will secure to Germany relations with these states. The vast territories which form the basin of the Parana, the Paraguay and the Uruguay, and their tributaries, contain the elements of a prosperity and wealth the most varied. What a future do these countries not offer?"

Will not the United States enter her claim for some portion of the much coveted trade with these countries, forming a part of our own hemisphere?

While benefitting by our recent explorations and surveys of the tributaries of La Plata neighboring and weaker republics—thus developing their resources we have opened for ourselves a vast field for trade in all the products of temperate and tropical zones; and these, with the hidden wealth of the frozen regions of the Andes, will find a rapid and safe river transit to the Atlantic. Protected by the flags of the great maritime powers, this excess of wealth will be poured into the lap of nations. We can apply to ourselves with equal force the arguments of Thiers and the German memorialists. We are not menaced by the rivalry of a manufacturing people, and our flag may find a field of extensive development. If the government of the

United States be true to its own interest, if it desire to cherish and maintain a feeling of national friendship with these countries, to the development of whose resources I sanguinely hope our work may offer no mean contribution; if it desire to secure the benefits to our country likely to arise from a commerce destined to be of inestimable value, it must step in while "the waters are troubled;" it must move ere alliances are made elsewhere.

The most flattering compliment has been paid this government by the people of the Argentine Confederation, through their representatives that could possibly be bestowed by one nation upon another. They have adopted our Constitution as theirs, in every particular, save in some few, where it would have been totally inoperative. They point to our progress as an example to their own people; they copy and circulate the writings of our statesmen; they desire to imitate us, so far as it may be possible, and to this end they look for a continuance of peace. These countries are worthy of our highest consideration; and if, in our diplomatic relations, we are not ably represented, then we are not fairly represented; and we do injustice to ourselves. Of their character, their resources, &c., there is but little known; and should this synopsis of our work have the effect of calling the attention of the commercial community to those regions embraced under the general name of "La Plata," the object of the expedition will have been attained; even the most sanguine anticipations will have been more than realized.

I trust, also, that our labors in the field of natural history will not be found to have been in vain. The collections in the different branches of natural history, which have been examined only cursorily by eminent naturalists, give evidence of their constituting a valuable contribution to that science. In support of this idea, I append the following letters,* showing the importance attached to those branches which have undergone simply a preliminary examination:

PHILADELPHIA, *November* 11, 1856.

SIR: The collection of birds made during the survey and exploration of the Rio Parana, by the United States steamer Water Witch, under your command, has been received for examination at the Academy of Natural Sciences of this city.

This collection is one of the most interesting ever made in South America, on account of the countries in which it was obtained being so seldom visited by travellers or naturalists, and my impression is that it contains numerous birds never before known, and certainly not in any museum or collection in this country.

I hope to have, at an early day, the honor of reporting to you, sir, the results of a more extended and careful examination, especially of the many remarkable birds in this collection.

The volumes relating to natural history have, within a few years, been completed by two European expeditions to South America. The more important is the voyage of her Majesty's ship Beagle, per-

*These letter, it will be seen, were received and inserted some time after the report had been submitted to the department.

formed by order of the British government. The other is D'Orbigny's voyage to South America, performed under the auspices of the government of France. In both of these the natural history is very carefully published. Your collections are certainly not inferior to those of either of these expeditions, and judging from the notes of officers, which I have seen, my opinion is that an American contribution to the natural history of South America can be made very much superior to both.

So long as the condition or progress of the arts and sciences properly characterize nations, the publication of the results in natural history of your expedition must be regarded not only as important to zoological science, but even in a national aspect.

I am, sir, very respectfully,

JOHN CASSIN.

Captain PAGE, *United States Navy.*

WASHINGTON, D. C., *November* 25, 1856.

DEAR SIR: The preliminary survey which I have made of the fishes and reptiles collected by you in Paraguay, fully anticipates the expectation we might have entertained in that respect, while you were yet in the field.

Of the fishes, two families are especially well represented—the *siluroid* and the *characini*. The first embracing fishes akin to the catfish of our fresh waters, and the sea-cat of our coast. It is especially numerous in South America, where its various types assume most diversified aspects. The second is almost exclusively proper to the southern hemisphere, since its northernmost representative is an inhabitant of the waters of the valley of the Rio Grande del Norte, (Rio Bravo,) and southwest portion of Texas.

I perceive already several species entirely new to science, and I am satisfied that, on a more critical examination of the whole collection, many more will turn out to be so. But the accession of new species is not the sole point of interest in the collection we owe to your exertions. Its study will touch to other problems as yet but little understood. And first and foremost is the problem of the natural affinities of these fishes with the types now extinct, and which have peopled the waters of geological eras in times gone by. Next comes the problem of the zoological affinities with the ichthyic fauna now living upon the present surface of the earth.

I could already point out to you some of the results, cursorily obtained, were I not reluctant to write fragments of a history which will make the subject of a general report to you, so soon as Congress shall have decided upon its publication.

I have a few words to say about the reptiles. There are but few saurians or lizards in the collection; some of them I have had an opportunity to examine from other sources.

The ophidians or snakes are well represented; several are mocassin-like, the others belong to the inoffensive colubridæ, both of land and water habits.

I see no frogs. A series of tree-frogs and tree-toads, however, make me think that many interesting results will be obtained from their investigation.

The same is true with regard to the toads, properly so called, of which there are several kinds. Their history will fill up a gap in the natural history of South America, and complete the results I have obtained a few years since while examining other collections.

I remain sincerely yours,

C. GIRARD.

Captain T. J. PAGE, *United States Navy.*

PHILADELPHIA, *December* 1, 1856.

DEAR SIR: I have seen and cursorily examined a portion of the specimens in natural history which have been brought from the interior of South America; the acquisitions of the expedition for exploration recently under your command, and am impressed with the importance to science and the industrial arts of all the information acquired by you. There can be no hesitation in declaring that you should be enabled, by an appropriation on the part of government, to make known the result of your labors, and thus secure, for the benefit of mankind, what has been deemed of sufficient consequence to authorize a special commission to obtain. With the hope that you will speedily be enabled to proceed with the work of publication, I am, very truly, your obedient servant,

C. CARSON,
Prof. Materia Medica, &c., University of Pennsylvania.

Captain PAGE,
United States Navy, Washington.

With the hope that the facts herein set fort, which have been hurriedly thrown together from my journal, may be enlarged upon at a subsequent but not distant day, and added to by the introduction of matter more interesting to the general reader, they are respectfully submitted.

I have the honor, sir, to be, very respectfully, your obedient servant,

TH. J. PAGE, *Commander*

Hon. J. C. DOBBIN,
Secretary of the Navy.

Annual report of the Secretary of State, December, 1857.

THE UNITED STATES AND PARAGUAY.

Mr. Marcy to Lieutenant Page.

DEPARTMENT OF STATE,
Washington, June 2, 1854.

SIR: I transmit the President's ratification of the treaty between the United States and Paraguay, which was negotiated and concluded by Mr. Pendleton on our part. It will be seen that the instrument was approved by the Senate, with a few unimportant verbal amendments, and has been ratified accordingly.

You are desired to propose an exchange of this ratification for that of the President of Paraguay. No objection on his part to this proposition can be anticipated. A full power authorizing you to make the exchange is herewith transmitted. The ratification of the President of Paraguay must include the amendments of the Senate of the United States expressed in the Spanish language. The preamble to the ratification may be similar to the preamble of our ratification. This must be followed by a transcript of the original treaty, word for word, and this by the ratification itself. A certificate of the exchange must be executed in duplicate by the person who acts on the part of that government and yourself. The copy in English may accompany the ratification of Paraguay, and the one in Spanish be placed with our ratification. A draft of such a certificate accompanies this communication.

When the exchange shall have been effected, you will commit the ratification of Paraguay to the custody of Mr. Buckalew, who is the bearer of this instruction. Inasmuch, however, as he may be detained at some point on his way home, it would be advisable for you to inform the department by the first mail of the date of the exchange, if it should be effected, in order that the treaty may be published.

You will please keep an account of any expenses which you may incur in executing this instruction. They will be reimbursed to you by this department.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

Lieut. THOMAS JEFFERSON PAGE,
United States Navy.

[Extract.]

Lieutenant Page to Mr. Marcy.

UNITED STATES STEAMER WATER WITCH,
Corrientes, October 17, 1854.

SIR: I have the honor to inform the honorable the Secretary of State that I received yesterday, at the hands of Mr. C. R. Buckalew, the treaty between the United States and Paraguay, with instructions from the department to effect an exchange of ratification with such person as may be duly authorized by the latter government.

Yesterday I despatched an officer of this vessel bearer of a communication from myself to the secretary of state of the republic of Paraguay, informing him that I had received from the President of the United States a commission and power to act in the exchange of ratification, and desiring to be informed if I should proceed to Asuncion, the capital of Paraguay, for that purpose.

My reason for thus addressing the government of Paraguay is because of a recent decree issued, prohibiting all "foreign men-of-war" entering or ascending the river Paraguay. This decree has been issued in consequence of the part taken by the Water Witch, under my command, in protecting and relieving American citizens, whose residence in that country had become subjected to restrictions almost amounting to persecution. * * * *

* * * * * * * * *

The water Witch became necessarily involved in this difficulty, because of the duty devolving upon her in the protection of the persons and property of American citizens, the government of Paraguay still pursuing a system of insult and injury, notwithstanding I had assured it of the consequences which would inevitably result from such a course. In the discharge of this duty, the Water Witch has brought upon herself the odium of the government of Paraguay, and it remains to be seen what course that government will take relative to the exchange of ratification of the treaty.

There is no reason why an objection should be made, and none could possibly be anticipated, save from such a government as Paraguay, whose form and administration would secure to it more appropriately the appellation of absolute despotism than that of republic.

I have the honor, sir, to be very respectfully, your obedient servant,

THOS. J. PAGE,
Lieut. Commanding.

HON. WM. L. MARCY,
Secretary of State, Washington, D. C.

Lieutenant Page to Mr. Marcy.

UNITED STATES STEAMER WATER WITCH,
Corrientes, November 5, 1854.

SIR: In my communication of the 17th October I advised the department of the steps I had taken towards effecting the exchange of ratification of the treaty between the United States and Paraguay. I now have the honor to inform the department that yesterday Lieutenant Murdaugh, the officer despatched to Asuncion with my letter to the secretary of state informing him that I had been commissioned by the President of the United States to exchange the ratification of the treaty, and desiring to know if I should proceed to Asuncion for that purpose, returned, bringing me the enclosed letter from the secretary of state, together with my letter returned to me.

Lieutenant Murdaugh stated to the secretary of state, on presenting my letter, that it related to the treaty. It was known to the government of Paraguay that the ratification had reached Buenos Ayres some days previously to the arrival of Mr. Murdaugh. The letters alluded to in the note of Mr. Secretary José Falcon, of the 29th and 30th of September, were addressed to me, returning my letters of the 28th and 29th, copies of which I have transmitted to the Navy Department. In his letter of the 29th of September Mr. José Falcon, secretary of state, says my letter of the 28th is returned without an answer because it is written in the English language; and his of the 30th of the same month, in reply to mine of the 29th, and returning the same, is simply a repetition of the same excuse for not noticing it.

I could see no obligation on my part to correspond with the government of Paraguay in any other than my own language, knowing full well that it possessed the means of having my letters translated into its own language. I had reasons, apart from the consideration that President Lopez, in his presumptuous exercise of authority, might conceive himself empowered to force me to correspond in his own language, for writing in English. The only person associated with me who is at all capable of translating English into Spanish is my clerk, and his imperfect knowledge of the language, (as a translator,) coupled with the fact that his translation would not be a fair and true expression of the tenor and import of my letters, determined me not to put myself in a position, in my official correspondence, to be misrepresented. And, again, as President Lopez's acts of tyranny and oppression towards American citizens, against which I protested, were acts of public notoriety, it became my duty, as the agent of my government, to define my position, that the foreign population, and the community generally, should understand the grounds on which I stood in the protection of Americans.

To assume an attitude opposed to the will of the President of Paraguay, however arbitrarily that will may have been exercised, was an offence in the eyes of President Lopez which he could not conceive any one would dare commit; and as my note of September 28, written in terms most respectful, plainly but firmly assured him as to the course it would become my duty to pursue, should there be a continu-

ance of the practices of insult and oppression towards the American citizens by the government officers, he did not wish that such a letter should be seen by any one other than himself and his secretary. He was as well aware of the contents of that letter before he returned it as I was; and he knows as well as I do the contents of the letter I addressed the secretary of state, by the hands of Mr. Murdaugh, a copy of which I have the honor to enclose to the department. I also enclose the reply of Mr. José Falcon, in the original, from which the honorable the Secretary will perceive that the government of Paraguay aims to be insulting, even in the forms and ceremonies of its official notes. It neither begins nor ends in the usual style of courtesy adopted between the most humble citizens; neither is it in the usual style of official correspondence of the Paraguay government. The importance attached to all such observances is nowhere so highly esteemed as in Paraguay.

President Lopez has refused to receive my official letter informing him of the fact that I had been appointed by the President of the United States to exchange the ratification of the treaty. He cannot plead ignorance of its contents; and if he were, I cannot conceive that such an excuse can possibly be received by the government of the United States. He does not express any inability on the part of the Paraguay government to have English documents translated into Spanish. That government has been addressed, on more occasions than one, by the State Department, in the English language. If I understand my duty aright, in my official communications with Paraguay, it is to make them in English. President Lopez has assumed this ground for the purpose of showing to the cringing officials by whom he is surrounded, if he can possibly carry his point, that he will make foreign governments, through their agents, as well as Paraguay subjects, obedient to his authority, and yet hopes to escape being held responsible and answerable by any foreign government he may thus insult in the obsequiousness of his correspondence and the unwarrantable misrepresentation of facts.

The President of Paraguay, notwithstanding his contemptible insinuations in his official organ, (a number of which I have forwarded to the honorable the Secretary of the Navy,) reflecting upon my conduct, does not specify one single act of mine as being wanting in profound respect towards his government in all of my intercourse with it. But because I removed the Americans from under the tyrannical rule of his despotic power he considers that I have committed a most heinous offence; and for this reason he treats with contempt my official announcement that I have been commissioned by the President of the United States to exchange the ratification of the treaty.

President Lopez has been in the habit of exercising his arbitrary power over the province of Corrientes, (one of the Argentine Confederation,) because it has not the means of repelling his aggressions; and he deems it essential to the maintenance of his uncontrolled sway at home to exhibit to the people of Paraguay an assumption of the same authority with all nations.

I beg leave of the department to indulge me in the expression of my opinion touching the subject of this communication. The pride

of President Lopez has been wounded by my presuming to remove from under his tyrannical rule Americans whom he determined to persecute some time longer. His hostility to Americans is a fact too well established to be hid under his professions of a sincere desire for the maintenance of friendly relations. He desires much that Paraguayans, in their benighted state, should acquire from Americans some ideas of the arts; but he apprehends that at the same time they acquire these, they may imbibe some notions of liberty and free government.

He designs to make this act of his appear in Paraguay, and in the adjoining states, as an exhibition of his power; hoping through professions, falsely made, to quiet the government of the United States into an indulgence of him in his course, and induce a censure of its agent. I deem this return of my note an insult to the government of the United States, and I indulge the hope that such measures will be adopted as will convince the President of Paraguay that the United States will not tolerate the indignities it has been his habit to bestow upon other governments.

The government of the United States, by assuming this position, will not only maintain that elevated stand which is its right in Paraguay, but in all other South American states. On the contrary, should it assume a conciliatory course, in manifestation of an earnest desire to maintain the most friendly relations, its motives will not be rightly judged, and the government of Paraguay will be emboldened in the assumption of a course still more arrogant.

I trust that the government of the United States will direct me to proceed to Asuncion, in the Water Witch, with a letter from the State Department to the minister of foreign relations, informing him that I am commissioned to effect the exchange of ratification of the treaty; or, if I may be allowed the suggestion, as a surer means of accomplishing the object, the commodore of the Brazil squadron might be instructed to proceed to Asuncion, on board of the Water Witch, with the brig Bainbridge in tow.

I feel confident in assuring the department that such a course would result in the exchange of ratification. But should it not, I hope the department will instruct me how to proceed. There are some governments with which peaceable and friendly relations, it is well known, can be maintained only by an exhibition of a sufficient force, and a determination to submit to no indignity.

I have taken the liberty of expressing my opinion and making suggestions touching this matter; in doing which I ask the indulgence of the department. I have been actuated by a sense of duty—a desire to inform the department not only of the facts of the case, but of the results likely to arise from the designs and course of the government of Paraguay, if acquiesced in.

The box containing the treaty is still unopened, as I received it from the hands of Mr. Buckalew. Any instructions the department may honor me with shall be carried out to the best of my ability.

I have the honor, sir, to be, very respectfully, your obedient servant,

THOS. J. PAGE, *Lieut. Commanding.*

Hon. W. L. MARCY,

Secretary of State of the United States, Washington, D. C.

Lieutenant Page to Mr. Falcon.

U. S. STEAMER WATER WITCH,
Corrientes, October 16, 1854.

SIR: The undersigned, lieutenant commanding the United States steamer Water Witch, Thomas J. Page, has the honor to inform his excellency José Falcon, secretary of state and minister of foreign relations, that he has this day received from the President of the United States a commission to act on the part of his government in the exchange of ratification of the treaty concluded between the United States and the republic of Paraguay on the 4th day of March, 1853.

With this commission the undersigned has received the treaty, which he is instructed to exchange.

The undersigned desires to be informed if he shall proceed, according to the instructions from his government, to the capital of Paraguay, for the purpose of effecting the exchange of ratification above alluded to.

The undersigned will despatch this communication by Lieutenant William H. Murdaugh, of the United States steamer Water Witch, who will, in person, hand it to his excellency, and will receive his reply.

The undersigned avails himself of this occasion to renew to his excellency the assurance of his distinguished consideration.

TH. J. PAGE.

His Excellency JOSÉ FALCON,
Secretary of State, and Minister of Foreign Relations,
Asuncion, Paraguay.

Mr. Falcon to Commander Page.

[Translation.]

ASUNCION, *October* 21, 1854.

In accordance with the conditions (set forth) in my letters of the 29th and 30th of the past, I return to you your letter dated October 16, in Corrientes, written in English, without accompanying it (or me) a translation signed, wondering that you should continue in your idea of mortifying me.

Your attentive servant, "De U. S. atento servidor,"

JOSÉ FALCON.

Mr. THOMAS J. PAGE,
Commander of the Steamer Water Witch.
[Does not say where.]

Commander Page to Mr. Dobbin.

U. S. STEAMER WATER WITCH,
Parana river, February 5, 1855.

SIR: I have the honor to forward to the department the enclosed report from Lieutenant Jeffers, from which it will be seen that a most unprovoked, unwarrantable, and dastardly attack has been made on the "Water Witch," while she was in the peaceable and rightful discharge of duty assigned me by the department.

On the 31st of last month I left Corrientes, with the small steamer and two boats, taking with me three of the officers and sixteen men, with the design of ascending the river Salado, in boats, if possible, should the small steamer prove inadequate. This force would have been necessary, in the event of using either the small steamer or the boats. Lieutenant Jeffers I left in charge of the Water Witch, with instructions to ascend the Parana river, so far as her draught would allow. This, I supposed, would be less than two hundred miles.

He sailed from the town of Corrientes on the 1st instant, and, as will be seen from his report, had not gone more than three miles from where the river forms the common boundary between Corrientes (one of the provinces of the Argentine Confederation) and Paraguay, when the Water Witch was fired into from a fort on the Paraguay side of the river.

The Water Witch was in the act of exploring a river which is the common boundary between these two countries. The right of each to navigate this river up to the limit of the province of Corrientes has never been questioned by either, and I had never heard that Paraguay presumed to exercise the power of preventing its navigation.

To the exploration of this portion of the Parana I had not only obtained the permission of the Argentine Confederation, and especially of the province of Corrientes, but an expression of earnest solicitude on the part of both the President of the Confederation and the governor of Corrientes had been made that I should establish the fact that the river is navigable to a much greater extent than that to which it is now known to be, of which they had some hope, but not the means of proving.

The navigation of this river to the extent of the territory of Corrientes is already secured to the flag of the United States by treaty with the Argentine Confederation. That government, so far from objecting to the Water Witch's ascending the river, had furnished me with an order, enjoining upon every province into whose waters I should enter the obligation to afford me every facility.

On what ground and for what reason the government of Paraguay has presumed to commit such an act, I am unable to conjecture. So far from the Water Witch making any hostile demonstration, she attempted to pass up the river through a channel way which was more on the Corrientes side, and, in doing so, was "run aground" by the pilot. This was seen from the fort. It was well known to the government of Paraguay, and doubtless to the commander of the fort, that the Water Witch was with a very reduced complement of

both officers and men, and consequently it could not have been her design to make an attack. The act of firing into the vessel cannot, therefore, receive the shadow of justification on the grounds of anticipating an attack. It is consequently a wanton outrage; the act of a government beyond the pale of civilization, and seemingly unconscious of the responsibility of such an outrage. This is, nevertheless, no palliation for so grave an offence.

Lieutenant Jeffers was in the act of executing instructions which he had received from me when the steamer was fired into. His course and conduct on the occasion I highly approve and commend, and I hope they will meet with the approval of the department.

It is with pain and regret that I report the death of Samuel Chaney, quartermaster. He died in two hours from the effects of wounds received from a ball and splinters. There were a few slight wounds received by others from splinters, which were so slight as not to prevent the discharge of the usual duties.

The vessel was hulled ten times, but in no point of any importance. The repairs can be readily made. I now proceed to Montevideo with the hope of obtaining from the commodore or senior officer two or three guns of suitable calibre and an addition of a few men. With this force I shall feel confident of the ability of the Water Witch to avenge the outrage which has been perpetrated on the flag of the United States.

I indulge the sanguine hope that the commodore will act in this matter with all the promptness which the exigencies of the case require, and that such a course will receive the approval of the department.

I have the honor, sir, to be, very respectfully, your obedient servant,

TH. J. PAGE,
Lieut. Com'g United States Steamer Water Witch.

Hon. JAMES C. DOBBIN,
Secretary of the Navy, Washington, D. C.

Lieutenant Jeffers to Commander Page.

U. S. STEAMER WATER WITCH,
Corrientes, February 2, 1855.

SIR: In pursuance of your instructions, and with the consent of the governor of the province of Corrientes, at 7 a. m. on yesterday, February 1, weighed anchor and stood up the river Parana for the purpose of making an exploration of its upper course so far as navigable, and rectifying the chart of the river up to the mouth of the Paraguay in all places where the channel had changed since the chart was made. Nothing particular occurred until 11 a. m., when we entered the Parana above the mouth of the Paraguay, (observing some movements at the Guardia "Cenito,") and continued our course diagonally across the stream towards the Corrientes shore, intending to pass between that and an island about four miles above the mouth

of the Paraguay, Guardia "Carracha," at the Paso del Rey, in sight on the right bank. At 11h 26m opened this station, a semicircular brick fort on an elevation of about 30 feet above the river, mounting, as well as I could ascertain, 6 guns, "*en barbette*," and shortly afterwards ran aground about a half a mile from the fort, on a sand bank making up suddenly out of deep water one fathom under the bows, 3½ at the wheel-house. A boat was sent from the guardia, which laid off observing our motions.

I immediately laid out a kedge astern, and about 12h 15m hauled off and let go our anchor; attempted to weigh the kedge, but lost it. While the men were at dinner, I observed the Paraguayans getting their guns ready. I shifted starboard gun to forward port, on port side of quarterdeck, cleared for action, filled forty shrapnell and twelve shells, and got up thirty stand of grape; but not supposing that anything serious would result, did not cut the rail over the port to which the gun had been shifted.

I then stationed Mr. Potts at the bell, and in charge of the deck, to assist the pilot, with directions to proceed at all hazards, unless the machinery should be disabled. Mr. Lamdin I placed in charge of the after guns, and Mr. Taylor at the engine. We mustered at quarters but twenty-eight, of whom two were sick, and five cooks and stewards.

At 1h 20m weighed; while weighing the anchor, the Paraguayan canoe which had been observing our movements came alongside, and a man offered me a paper printed in Spanish, which I declined to receive on the ground that I could not read it. As soon as the anchor was aweigh, I stood up the river, the crew at quarters. The pilot informed me that the only practicable channel was close to the fort, and this channel I directed him to take. On arriving within three hundred yards, I was hailed by a person, who, I am informed was the Paraguayan admiral, but I did not understand the import of the hail. Two blank cartridges were then fired from the fort in quick succession, and followed by a shot. I had given particular orders that no shot should be fired except in return, and then only by my directions; and on receiving this first fire, I directed a general fire in return.

The first shot of the enemy carried away the wheel, cut the ropes, and mortally wounded Samuel Chaney, the helmsman. A bar was soon shipped, and the vessel steered by it, but with some difficulty on account of the rapidity of the current. In a couple of minutes after the action had commenced the pilot deserted his station, and hid himself behind the engine-house. Dragged up thence by Mr. Potts, on looking around him he exclaimed, "We shall certainly ground as there is not sufficient water in the channel." By this time we had run past all the guns of the battery except one; and on learning the state of things, I left the bow gun, which I had been directing, which was no longer serviceable, and took the deck. The pilot, whom I had again to force up to his station, in a high state of excitement, repeatedly exclaimed, "We shall be aground in a moment," insisting that we could not pass up. The vessel being then in ten feet water—drawing nine—I was reluctantly compelled to back down past the battery, exposed to a severe fire, which, from the position of the vessel being nearly bows on, I could not return. On getting out of range

I anchored, repaired damages, and filled more ammunition, having observed the Paraguayan war steamer "Taquari" firing up.

I am satisfied the pilot was not in the channel; but in his state of fright nothing could be done with him, and to have grounded would have been to insure the loss of the vessel, as it is said that the Paragauyans have at this point six thousand men and a numerous artillery, to arrest the passage of the Brazilian fleet. The "Taquari," with their gun-boats, would alone have been an overwhelming force. At 3 p. m. weighed anchor and returned to Corrientes.

It had been my intentin to attack the Guardia "Cenito," where a gun boat was lying. The "Taquari" dropped down and anchored there for its defence, which made the odds too great for any hope of a successful attack with my little crew of 28 men, and the armament one 24 and two 12 pound howitzer boat guns. Although so superior in force, the "Taquari" made no demonstration of following us.

The amount of damage sustained by the enemy it is difficult to estimate. Mr. Bushell, the clerk, who was directed by me to take notes of the action, states that one of their guns was dismounted, and, from the good explosions of several of the shrapnell, some execution must have taken place. A battery of this nature exposes so few men that I cannot estimate their loss as very great. I am confident that, had all the officers and men been on board, we should have killed or driven them from their guns, and taken the battery; but I must do them the justice to say that I saw no signs of flinching. The fire was slow but remarkably well directed.

It will, I hope, be evident, from the preceding details, that this attack was as unprovoked as it was unexpected; but, following the dictates of prudence, I was not unprepared for such a result. It is not a little remarkable that at no time, either before or after the engagement, was any flag displayed.

In conclusion, I must fulfill an agreeable duty in bearing witness to the zealous manner in which the engineers of this ship supported me on this occasion. Mr. Potts was in charge of the deck; Mr. Lamdin of a division of guns; and the latter assisted personally in loading after some of his men had deserted from their quarters. The engine was worked by Mr. Taylor with as much promptitude as on ordinary occasions.

I have the honor, sir, to be, very respectfully, your obedient servant,

WILLIAM N. JEFFERS,
Lieutenant in Command.

Lieutenant Commander THOMAS J. PAGE.

Commander Page to Mr. Marcy.

[Extract.]

UNITED STATES STEAMER WATER WITCH,
Montevideo, January, 28, 1856.

SIR: I have the honor to inform the department that, being about to leave these waters, their exploration, so far as it is open to me,

having been completed, I have deposited in the legation at Buenos Ayres, under the charge of the resident minister, the treaty of which I was commissioned to exchange the ratification with the government of Paraguay.

Immediately on the refusal of President Lopez to receive my communication, informing him of my instructions from my grovernment relative to the exchange of ratification, I communicated the fact to the State Department; also, that I would keep the treaty in my possession until further instructed. Having received no instructions relative to the matter, I have concluded that the best course for me to pursue is to leave the treaty in the legation at Buenos Ayres, subject to the orders of the department. * * *

I have the honor, sir, to be, very respectfully, your obedient servant,

THOMAS J. PAGE,
Lt. Commanding U. S. Steamer Water Witch.

Hon. WM. L. MARCY,
Secretary of State, Washington, D. C.

Mr. Marcy to Mr. Fitzpatrick.

[Extract.]

DEPARTMENT OF STATE,
Washington, August 5, 1856.

SIR: * * * * * * *

It it deemed advisable that you should propose an exchange of the ratifications of the treaty with Paraguay, which was concluded on the 4th of March, 1853.

* * * * * * * *

You will herewith receive a letter introducing you to the minister of foreign affairs of Paraguay. On presenting it, and on other occasions when you may have intercourse with him, and with other persons in authority there, you will endeavor to convey an impression of the strong desire of the President to maintain friendly relations with that country, and of his hope that this disposition will be reciprocated.

Your first business will be to propose an exchange of the ratifications of the treaty, for which you are authorized by the accompanying power from the President. If your proposition for this purpose should be objected to, you will endeavor to meet the objections. There is no information in this department which enables it to anticipate what they may be, or, indeed, that there is any just cause for a rejection of the treaty.

* * * * * * * *

I am, sir, &c., &c.,

W. L. MARCY.

RICHARD FITZPATRICK, Esq.

[Extract.]—Translation.

LONG LIVE THE REPUBLIC OF PARAGUAY!

ASUNCION, *November* 8, 1856.

The Minister of Foreign Relations of the Republic of Paraguay to Mr. Richard Fitzpatrick, Special Commissioner of his Excellency the President of the United States of North America, near the government of the Republic of Paraguay.

I have the honor to address myself to the special commissioner of his excellency the President of the United States of America, to say to him that I have observed in his credential letter of the 30th of July of this year his special authorization for the sole purpose of exchanging the ratifications of the treaty of the 4th of March, 1853, and that the honorable Secretary of State of the United States, in a note which he has addressed to me, dated the 5th of August last, makes known that you have been appointed special commissioner to confer with me on all the matters connected with the interests and relations of our respective governments.

It is requisite, therefore, that you should be pleased to declare the objects of said special commission, in order that we may understand the halt in the pending questions in regard to the complaints of this government against that of the United States for the serious offences offered to it by the scandalous hostilities of the commanding officers of the Water Witch, a United States vessel-of-war.

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I avail myself of this opportunity to salute the special commissioner with my most distinguished consideration and esteem.

NICOLAS VAZQUEZ.

[Translation.]

LONG LIVE THE REPUBLIC OF PARAGUAY!

ASUNCION, *November* 8, 1856.

The Minister of Foreign Relations of the Republic of Paraguay to Mr. Richard Fitzpatrick, Special Commissioner of his Excellency the President of the United States of North America, near the government of the Republic of Paraguay.

I have the honor to address myself to the special commissioner of his excellency the President of the United States of America, to say to him that I have observed in his credential letter of the 30th of July of this year his special authorization for the sole purpose of exchanging the ratifications of the treaty of the 4th of March, 1853, and that the honorable Secretary of State of the United States, in a note which he has addressed to me, dated the 5th of August last, makes known that you have been appointed special commissioner to

confer with me on all the matters connected with the interests and relations of our respective governments.

It is requisite, therefore, that you should be pleased to declare the objects of said special commission, in order that we may understand the halt in the pending questions in regard to the complaints of this government against that of the United States for the serious offences offered to it by the scandalous hostilities of the commanding officers of the Water Witch, a United States vessel-of-war, under circumstances that this department has not yet received an answer to the notes which it addressed to the honorable Secretary of State of the United States in regard to the unprovoked outrages of said commanding officers of the Water Witch.

Nor do we know whether the government of the United States wishes to interfere in the claim which has been announced by Edward A. Hopkins, an American, against this government, when, at his request, he has been allowed to depart freely, together with all the members of what he called the "United States Navigation Company," abandoning the little property of the company, itself burdened with a debt of ten thousand dollars, that it received from the national treasury at an annual interest of six per cent., when no one would lend it a dollar to pay its matured obligations which it had deceptively contracted.. The government of the republic ordered this aid to be given without bond or security of any kind, and only on the obligation of said company to save the honor of a consul of the United States in this city—a favor which Hopkins has requited by unheard of insolences, and by excesses which at last occasioned the supreme decree revoking the exequatur that had been accorded to his credentials as consul of the United States in Paraguay.

In all these outrages and hostilities the government of the republic has been seriously offended, and there is due to it satisfaction instead of claims for millions of dollars, by which Hopkins has thought to intimidate the government of the republic.

It is proper, therefore, to know the determination of the government of the United States in regard to the said outrages of the commanding officers of the Water Witch, and in regard to the pretended claims of Hopkins, in order to perceive whether the occasion has arrrived to make a plain and full exchange of ratifications of the treaty of the 4th of March, 1853; and to this end you will be pleased to answer this note.

I avail myself of this opportunity to salute the special commissioner with my most distinguished consideration and esteem.

NICOLAS VAZQUEZ.

[Translation.]

ASUNCION, PARAGUAY, *November* 10, 1856.

SIR: I have had the honor to receive your excellency's note, dated the 8th instant, and in reply have the honor to inform your excellency

that my mission near the government of the republic of Paraguay is solely for the purpose of exchanging the ratifications of the treaty concluded on the part of the United States of America, by Mr. Pendleton, with the republic of Paraguay, on the 4th of March, 1853, as is stated in my credential letter from the President of the United States of America, which I have had the honor to present to his excellency the President of the republic.

On the said treaty being exchanged, I consider my mission near the republic ended.

I avail myself of this opportunity to express to your excellency my high consideration and respect.

RICHARD FITZPATRICK,
Special Commissioner of the President of the United States of America for the exchange of the ratifications of the treaty with the republic of Paraguay.

To his Excellency Señor Don NICOLAS VAZQUEZ,
Minister of Foreign Relations of the Republic of Paraguay.

[Translated.]

LONG LIVE THE REPUBLIC OF PARAGUAY!

The Minister of Foreign Relations of the Republic of Paraguay to Mr. Richard Fitzpatrick, Special Commissioner of his Excellency the President of the United States of North America, near the government of the Republic of Paraguay.

ASUNCION, *November* 15, 1856.

I have had the honor to lay before his excellency the President of the republic the difficulty to which we have adverted in effecting the exchange of the ratification by his excellency with that by his excellency the President of the United States of North America, of the treaty of friendship, commerce, and navigation, concluded in this capital on the 4th of March, 1853, between the plenipotentiaries of the two governments, in consideration that the government of this republic, on the recommendation of its council of state, has, on the 12th of March, 1853, plainly and fully ratified the said treaty of the 4th of the same month, and that the government of the United States of North America has, on the 1st of June, 1854, given its ratification, with thirty-two amendments made by the Senate of the United States, and with the extension of the fifteen months stipulated for in article sixteen of the treaty to twenty-four months, for the exchange of the ratifications; and I am directed to say to you, as I now do, that his excellency the President of the republic cannot consent to an exchange of a plain and full ratification of said treaty of the 4th of March, 1853, with the ratification which his excellency the President of the United States has given to the said treaty, with the aforesaid amendments, of which amendments you have been so good as to transmit me a copy of the English amended text and its translation into Spanish.

I am likewise directed by his excellency the President of the republic to make known to you that his excellency is in the best disposition to renew the negotiations of a treaty of friendship, commerce, and navigation, as soon as his excellency the President of the United States may desire to send a plenipotentiary to this city for the purpose, with suitable instructions.

With such an opportunity, the pending questions, to which I have referred in my previous note to you of the 8th instant, can be settled, it not being easy to continue longer without a solution which shall strengthen the good understanding of the two governments.

I avail myself of this occasion to reiterate to you the assurance of my distinguished consideration and esteem.

NICOLAS VAZQUEZ.

[Translation.]

REPUBLIC OF PARAGUAY,
Asunicon, November 18, 1856.

The undersigned, special commissioner of the United States of America near the republic of Paraguay, has had the honor to receive the note of the honorable minister of foreign relations of the republic of Paraguay, dated the 15th instant.

The undersigned cannot perceive the difficulty mentioned in the note of the minister of foreign relations.

The treaty made at Asuncion on the 4th of March, 1853, is not written in the terms which are employed in other treaties between the United States of America and foreign nations with whom it has treated. The expressions "United States of North America," "North American Union," &c., are not found in those treaties; that of "the United States of America" only is used; and the Senate of the United States of America will assuredly amend the language of every treaty with any nation or power previous to its ratification.

In the treaty between the republic of Paraguay and the United States of America, the terms "United States of North America," "North American Union," &c., are frequently used; but this is to be attributed entirely to the carelessness of the representative of the United States of America, and not to the representative of the republic of Paraguay.

The undersigned desires to call the attention of his excellency the minister of foreign relations to the fact that the emendations made by the Senate of the United States of America are only corrections, and not alterations, either of the sense of the treaty or of the obligations of the high contracting parties.

It is only necessary that the ratification of his excellency the President of the republic of Paraguay should include the amendments made by the Senate of the United States of America, and this by his ratification of the exchange in the Spanish language and in duplicate. Nothing more is requisite to render the treaty valid.

With respect to the alteration of time by the Senate of the United States of America, from fifteen months to twenty-four months the

undersigned is unable to perceive that any default can be attributed to the high contracting parties by the lapse of time between the signing of the treaty and the exchange of its ratifications; the distance between the two countries is very great, and the means of conveyance not at all certain, and there may arise other causes of delay which cannot be foreseen by either the republic of Paraguay or the United States of America. If the ratification should be now exchanged, notwithstanding the time named in the amendments of the Senate of the United States of America (twenty-four months) has already passed, no difficulty will arise hereafter.

The undersigned avails himself of this opportunity to renew his assurances of high consideration and respect

RICHARD FITZPATRICK.

His Excellency SEÑOR DON NICOLAS VAZQUEZ,
Minister of Foreign Relations of the Republic of Paraguay.

LONG LIVE THE REPUBLIC OF PARAGUAY!

The Minister of Foreign relations of the Republic of Paraguay, to Mr. Richard Fitzpatrick, Special Commissioner of the United States of North America near the government of the Republic of Paraguay.

ASUNCION, *November* 26, 1856.

I have had the honor to receive the note that you addressed to me on the 18th instant, in which you observe that the treaty made at Asuncion on the 4th of March, 1853, is not written in the terms employed in other treaties between the United States and foreign nations with whom it has treated, and attribute this entirely to the carelessness of the plenipotentiary of the United States who concluded and signed that treaty.

You quote the amendments that the Senate of the United States has made to the said treaty of the 4th of March, and conclude that it is necessary that his excellency the President of the republic should include in his ratification of the exchange in the Spanish language and in duplicate the amendments made by the Senate of the United States, and that nothing more is necessary to render the treaty valid.

His excellency the President of the republic, on the recommendation of his council of state, has, on the 12th of March, 1853, plainly and fully ratified the said treaty of the 4th of the same month, as I have made known to you in our official conference; and, in this posture of the affair, it is not easy for his excellency the President of the republic to submit to a new ratification in the terms which you propose; and, in communicating this decision, I acknowledge the reception of your said note of the 18th, reproducing my note of the 15th instant, and close this correspondence.

I avail myself of this opportunity to reiterate to the special commissioner of the United States the assurance of my distinguished consideration and esteem.

NICOLAS VAZQUEZ.

Commander Page to Mr. Toucey.

[Extract.]

WASHINGTON, D. C.,
August 4, 1857.

SIR: I have the honor to acknowledge the receipt of the communication of the 29th ult., accompanied by despatches from the government of Paraguay, under date of October 3d and 4th, 1855, and from Mr. James A. Peden, resident minister of the United States near the government of the Argentine Confederation, asking of me such explanatory statement as I may have in my power to make.

The attack made upon the United States steamer Water Witch, on the 1st of February, 1855, by the Paraguay fort "Itapiru," was reported to the department in my communication under date of the 5th of the same month, enclosing a more detailed account of that outrage, from Lieutenant Jeffers, who, at the time alluded to, was the commanding officer of the vessel, I, accompanied by the other officers and the better part of the crew, having left for a distant, and, as I supposed, a more dangerous exploration. For the facts explanatory of this attack, I refer the department to those despatches, and to the accompanying paper, marked A, which I feel it my duty to lay before the public in justification of the course of the Water Witch, and in refutation of a presumptuous claim made by President Lopez to the exclusive jurisdiction of that part of the Parana river where she was fired into.

The despatch, dated February 4, 1855, of Mr. José Falcon, secretary of state of the Paraguay government, to the Secretary of State of the United States, on the subject of the attack upon the Water Witch, accompanied by a fancy sketch of what purported to be a representation of the country in the immediate vicinity of the fort Itapiru, of the course of the channel, and of the movements of the vessel, require some special notice. It was published in the papers of Buenos Ayres soon after its date, and the sketch alluded to was for sale in the bookstores. So soon as the letter had made its appearance, I informed the department of the glaring attempt on the part of President Lopez to deceive the public, and enclosed a faithful representation of the place, the course of the Water Witch, her point of grounding, and the depth of water of the two branches of the river up to the point at which she was fired into. I now enclose them both, reduced to the same scale, that the department may judge of the fraud designed to be practised by President Lopez upon the Secretary of State and upon the public. When the chief magistrate of a nation will presume, in his official correspondence with the head of a foreign power, so grossly to deceive and pervert the truth, he seems really to descend to a political state which renders his correspondence unworthy of notice. President Lopez is very much in this condition at this time among the States of La Plata. His communication alluded to (for the name of Mr. José Falcon appended to it is a mere matter of form) is full of misrepresentation.

One of the gravest charges he brings against me having the semblance of truth is, that "he (I) had caused steam to be put up and ordered the guns to be loaded, &c., whenever the attempt should be made to prevent the departure of Mr. Hopkins and other Americans on board the steamer."

He aims to convince our government that there was no desire or attempt to arrest the departure of the Americans from Asuncion, when they had been informed, on applying at the custom-house for the permit to remove or ship their property, that the permit would not be granted until they had surrendered the deeds, &c., held by the company as evidence of its rightful possession of certain real estate in Paraguay.

I informed the secretary of state that the papers demanded represented the property of citizens of the United States, and could not be given up, and that if permission were not granted to the Americans to leave the country by the usual mode of conveyance I should take them away in the Water Witch, and specified the time when I should do so, in order to enable the government to retract its prohibition. The hour came, and not until the government saw the Americans and their effects being received on board of the vessel did it issue the permit. The entire statement of my manner of treating the passports of the Americans, his correspondence, &c., is a tissue of misrepresentation. Their passports I never saw, and the correspondence he alludes to I gave into the hands of two officers, with instructions to deliver them to the captain of the port, which they reported having done, as ordered, and I have no doubt but that the duty was discharged in the most civil and polite manner. Were I to particularize the misrepresentations contained in this communication, and confute them, *seriatim*, it would protract this paper unnecessarily. I beg leave to refer you to my letter of September 29, 1854. The paper marked A, which appeared in the public journals of Buenos Ayres, is the only notice I took of the low abuse published in the "Seminario," the official organ in Paraguay, because of my interference in the protection of the Americans then residing in that country. I was aware that the libelous pen of President Lopez was fully understood in the neighboring states, and that to notice his article would only stimulate him to further abuse. But when he attempted to show that the Water Witch had infringed a national right, I felt it my duty to inform the public of the fraud, and show that she was justified in being where she was by every principle of international law.

With regard to the decree of the 3d of February, 1855, prohibiting foreign men-of-war from entering the waters claimed by Paraguay, I am not aware that it has been officially revoked; but I am informed, by correspondence from Buenos Ayres and from President Lopez's official communication to the Paraguay congress, that men-of-war of Brazil, of England, and of France have, within the past year, been within the waters claimed by that government, and have visited Asuncion, the capital. I presume, therefore, that the decree has been virtually, if not officially, annulled. * * * *

A.

UNITED STATES STEAMER WATER WITCH,
Montevideo, March 9, 1855.

MR. EDITOR: I recognize in you paper of the — March an article copied from the "Seminario," as the production of the President of "the republic." It is with profound respect and all due deference that I presume to differ, in the construction of any point of international law, with a person of his deep learning, enlarged, liberal, and intelligent views, and of his elevated position; but in the article alluded to, touching the glorious attack made by the fort at Itapiru upon the Water Witch, there are exclusive rights assumed for the government of Paraguay, which, it appears to my humble judgment, are not sanctioned by the laws of nations.

On the question whether there are or not two, three, or more channels in the river Parana, between the shores of Paraguay and Corrientes, and whether the main channel is or is not on the Corrientes side, I shall not presume to advance an opinion at variance with that of his excellency, because *his* should be taken as the very *best authority;* but I hope I may be permitted to state, in justification of the Water Witch being out of the main channel, as established by his excellency, that she was being directed by a pilot, who had been recommended to me, and that it is our custom, on board of American vessels, to concede to pilots the right to give the course and direction. This pilot, having something of an instinctive dread of this Paraguay fort, endeavored to discover a channel on the Corrientes side, and, in doing so, ran the steamer aground in six feet water. To haul her off occupied a short time and occasioned the loss of an anchor, which, singular to say, was neither seen at the fort (notwithstanding the laughing of the men on board was heard) nor mentioned in any of the luminous effusions on the subject from Paraguay.

The pilot failing to discover a channel on the Corrientes side, and having been told previously in Corrientes, as subsequently came to light, that he must at this point keep close to the Paraguay shore, directed the vessel into that channel after she had been gotten afloat.

This is tolerably good evidence to me that there was no channel of more than six feet at that time on the Corrientes side; and moreover, that the main channel of the river was on the Paraguay side. But as his excellency is of a different opinion, I will not presume to argue the point. I simply indulge the hope that it may suit the wisdom of his excellency to call in requisition some of the abundant intellectual resources of Paraguay, for the establishment of the fact that "the narrow channel of the Parana at Itapiru is not the main channel." I feel satisfied that I may assume the responsibility of satisfying his excellency that any expedition of the kind designed by Paraguay will meet with no opposition from the Argentine government in ascending the *main channel* on the Corrientes side—at least I do not think that his exploring vessel will be fired into.

This difference of opinion between his excellency and myself as to the direction of the main channel is not a matter of such grave im-

port as is that touching the exclusive right to, or exclusive jurisdiction over, that part of the Parana as is set forth in the communication alluded to.

President Lopez says: "Why absolutely persist in infringing a measure, a rule which the government of Paraguay, in pursuance of its rights, has established, governing the narrow channel in front of Itapiru? Why aim to force this passage, when the principal channel on the Corrientes side is free to all the world?"

Here is one channel of a river, the common boundary between the Argentine Confederation and Paraguay, claimed by the government of Paraguay as her exclusive right, because it is more on the Paraguay side of the river; while with magnanimous generosity the channel on the Corrientes side, if there be one, is by the same government declared "free to all the world."

This may be in accordance with some new code of international law which has been established by his excellency, and for the government of nations that may aspire to friendly relations with the government of Paraguay; but it certainly is at variance with the principles of the code which is recognized by most nations as the "law of nations."

I quote "Wheaton on the Laws of Nations," (page 242:) "Where a navigable river forms the boundary of conterminous states, the middle of the channel or thalweg is generally taken as the line of separation between the two states, the presumption of law being that the right of navigation is common to both," &c. Page 243: "It seems that this right draws after it the incidental right of using all the means which are necessary to secure enjoyment of the principal right itself. Thus the Roman law, which considered navigable rivers as public or common property, declared that the right to the use of the shores was incident to that of the water, and that the right to navigate a river involved the right to moor vessels to its banks, to load and unload cargoes, &c. The public jurists apply this principle of the Roman civil law to the same case between nations, and infer the right to use the adjacent land for these purposes, as means necessary to the attainment of the end for which the free navigation of the water is permitted."

Page 244: "By the treaty of Vienna, in 1815, the commercial navigation of rivers, which separate different States, or flow through their respective territories, was declared to be entirely free in their whole course, from the point where each river becomes navigable to its mouth," &c.

At page 248: "The right of the United States to participate with Spain in the navigation of the river Mississippi was rested by the American government on the sentiment written in deep characters on the heart of man, that the ocean is free to all men, and its rivers to all their inhabitants. This natural right was found to be universally acknowledged and protected in all tracts of country, united under the same political society, by laying the navigable rivers open to all their inhabitants."

At page 351: "It was a principle that the right to a thing gives a right to the means, without which it could not be used, that is to say, that the means follow the end. Thus a right to navigate a river

draws to it a right to moor vessels to its shores, to land on them in cases of distress or for other necessary purposes. This principle was founded in natural reason, was evidenced by the common sense of mankind, and declared by the writers (the principal writer on international law) before quoted.

Judging from the above quotations, it does appear to me that there is guarantied by the law of nations to the Argentine Confederation—one of the "conterminous states"—the free and peaceful use of the river Parana *in all its parts*, regardless of this or that channel, wheresoever it may form the common boundary between the Confederation and Paraguay. This being granted, I then claim, under authority from the Argentine Confederation, the right for the Water Witch to explore any and every portion of the Parana river which she, as one of the conterminous states, would have the right to navigate.

I do not propose to enter into the discussion or decision of questions of disputed limits between Paraguay and the other states—for there would be as many questions as she has contiguous states; but I do assert, notwithstanding I differ with such high and learned authority as the President of Paraguay, that every principle of international law, right, and propriety, justified the Water Witch in ascending the Parana to the extent of the territory of the Argentine Confederation, and to the use of any part of that river within those limits.

However widely we may differ on this point, there is one sentiment advanced by his excellency, in which it gives me pleasure to assure him that we agree most perfectly, and that is his anticipation as to the tone of public opinion amongst all civilized nations touching the attack upon the Water Witch. He expresses himself thus: "Already we seem to read in the columns of foreign periodicals the attack upon or conflict with the Water Witch represented in a false light. It will be said that a vessel engaged in a scientific work, at the moment in which she was determining the topographic position of this or that point, was attacked and sunk by a horde of savages! Already we are prepared to hear that Paraguay is a country behind the age, wanting in intelligence, that by her progress and science are trodden down, and such is her hatred to foreigners that she would sooner hold communication with the ferocious beasts of the desert."

I agree with his excellency that such will unquestionably be the estimation in which this act will be held by the civilized nations of the earth; but as the government alone is responsible for such an outrage upon international right and courtesy, the people of Parguay, who are very good people, should not suffer in public estimation from an act which, I feel assured, they neither counseled nor approved. Now, Mr. Editor, I think we are irresistibly brought to the conclusion that the Water Witch, with an armament of three boat howitzers, designed as a defence solely against savages, with a crew diminished by one-half in efficiency, and with one officer, save the engineers, (the other officers and the rest of the crew having been detailed for other duty,) while in the rightful and peaceable exploration of a river, in which exploration the whole world is as much interested as the United States, and their neighboring states more than any others, is fired into by order of President Lopez; that a fort is armed and

garrisoned; an encampment formed of thousands of soldiers to arrest the Water Witch in her scientific work, and then she is fired into, as though she aimed at a demolition of the whole encampment. The scene at the encampment is thus graphically described by his excellency, which certainly does honor to the *gallant* defenders of their country against *such odds:* "In order to understand how, at the first intelligence of the occurrence at Itapiru, in the encampment of the Paso de la Patria, all the troops put themselves in motion, each soldier believed that the hour of combat had arrived, and enthusiasm pervaded the ranks as if the country were in danger and each man had been called to defend his threatened fireside."

With this view of the case, as set forth under authority of international law, and with the representation of the occurrences as given by President Lopez, I agree with him perfectly in this anticipation as to the opinion which every civilized community will form of the government of Paraguay.

Permit me, Mr. Editor, before concluding this communication, to quote from an editorial in your paper of the 2d. You say: "In view of the accounts as given on both sides, we should in truth declare that had we found ourselves in the place of the commandant of Itapiru, we should have done as he did; that is, have fired into the Water Witch."

In this opinion I agree with you perfectly; but, Mr. Editor, will you take one step further, and inform your readers had you been in the situation of President Lopez would you have issued such orders to the commandant of Itapiru?

TH. J. PAGE.

B.

ELIZABETH CITY, *Union County, N. J., July* 30, 1857.

MY DEAR SIR: Your letter of the 20th reached me on the 25th. I am astonished to learn the course you state that Mr. Peden has pursued, and agree with you fully in the statement in relation to the men; the report you made, and the disposition of the man whom you reported as being irresponsible for his own conduct—in other terms, as "*non compos mentis.*"

I have no recollection of your leaving with me a written report; I find none among my papers. Should I, however, come across such a paper I will send it to you. My impression is that you retained the statement of the circumstances of the men's conduct.

Truly yours,

W. D. SALTER.

Captain THOS. J. PAGE, U. S. N.,
Washington, D. C.

Statement of Commander Page.

It has occurred to me that in setting forth the acts of usurpation of President Lopez against the American company, which had been established in Paraguay under such favorable auspices, that the "*quo animo*" of the men should be made to appear, which, according to public opinion throughout tho whole country of La Plata, as well as in Paraguay, wheresoever this opinion could be arrived at, was to reap for his own personal benefit the profits likely to accrue to this company. In one branch of its operations, (the cigar factory,) a number of hands (women) had been instructed in the making of cigars, so far as to make it a difficult matter to distinguish by appearance their manufacture from the best of Havana make. On the breaking up of the American company, one of President Lopez's sons immediately went into the cigar business, with these same operatives.

President Lopez is, in addition to his supremacy in the government and over the nation, the great farmer and merchant of Paraguay. Throughout the country there are well stocked estencias and stores of goods, in which his family is directly interested. Whatsoever conflicts with his pecuniary interests would of course meet with his opposition and consequent failure; he should, therefore, be made a partner in all enterprizes set on foot by foreigners, otherwise their success would be problematical.

Yours, very respectfully,

TH. J. PAGE.

The general opinion here is that President Lopez, who did not at first believe in the success of your enterprize, when he learned the near arrival of your steamboats, laid hold of the first pretext to violate the property of the company, and to expel it from the country, because it gave him umbrage. Under the name of the state he monopolizes all to the profit of his family, and will not permit a serious rivalry in his commercial transactions, which embrace all branches. North American industry and energy ought, then, to be the first sacrificed.

EUG. GUILLEMOT,
Chargé des Interets Francais au Paraguay.

E.

The United States and Paraguay Navigation Company, composed of citizens of different States of the Union, acting under a charter granted by the general assembly of Rhode Island, respectfully submit the following statement of their claim upon the government of Paraguay, and the grounds thereof.

Many of the members of said company having been heretofore largely engaged in foreign commerce, and being desirous of opening the interior waters of South America to American trade and industry, trusted to the favorable disposition of the government of Paraguay to such enterprises, as declared by the public decree of that government of 20th May, 1845. These decrees set forth that "the supreme national government, desiring to develop and stimulate the industry of the great body of the people of the republic, and considering that one of the means most adequate to this result is to define and secure the conditions and rights of all who shall unite for such useful ends, decree," among other things, "article 3d, that whoever shall introduce into the republic any foreign discovery shall enjoy the same advantages as if he was the inventor;" among which advantages, in article 5th, is "the exclusive enjoyment of the patent for from five to ten years;" and that law was applied by the secretary of state of that country to an enterprise such as was undertaken by this company, as appears in a letter from that gentleman, then engaged in a special mission to the court of Brazil, addressed to the then late special agent from the government of the United States to Paraguay, dated Rio Janeiro, December 15, 1848, from which the following extract is submitted: "In the said decree President Lopez has resolved all questions which could arise in regard to privileges and premiums. If you introduce into the country machines, or new means of industry which the country does not now possess, this decree gives you the monopoly for ten years at least, and you do not require a special concession."

The official gazette contains decrees securing to foreigners further benefits of naturalization, but the members of this company preferred that their agents and employés, whether engaged in manufactures or commerce, should at all times have the protection of American citizenship, and in the prosecution of the entire enterprise they relied with the fullest confidence upon the power and the disposition of their own government to protect from outrage and spoliation the persons and property of American citizens.

The company being prepared, by the long commercial experience of some of its members, by the researches of others into all the published sources of information as to the productions of the interior of South America, and also by the personal observation of its president and of its general agent in that region, invested in the two expeditions to Paraguay a capital of some $300,000, in the purchase of sail and steam vessels, in articles of American manufacture, and in a great variety of machines and implements, such as steam engines, saw mills, cotton gins, planing machines, sugar mills, brick machines, rice mills,

agricultural tools, &c., &c., a particular inventory of which was attached to the memorial now on file in the Department of State; and sent out a large corps of mechanics and others skilled in the use of such machinery, and in the care of such vessels, and in the conduct of the various departments of business in which they were to be employed.

A complete account of the amount and mode of this expenditure, and of the persons and articles sent to said country, has been presented, under the oath of the officers of the company. The company are ready to exhibit vouchers or any further verification thereof that the department may require.

Notwithstanding unforeseen delays, upon the arrival of the expedition at Asuncion, the capital of Paraguay, in October, 1853, the agents of the company were received with the greatest favor. Permission to purchase land was conceded by the president; the use of government barracks was granted to the company, free of expense, for the use of their employés; a loan of money was made upon the credit of the company for a term of two years; a large number of persons were impressed by the government, and paid by the company, to work in their cigar factory and other establishments.

The president, Lopez, accepted, in his official capacity, the presents sent him by the company, and granted many other extraordinary facilities for their operations. In verification of these statements, we refer to the affidavit of W. E. Hines, general cashier of the company in Paraguay, hereunto annexed

The government of Paraguay has never denied, but makes a boast of, these facts. We give an instance of its decrees for our benefit, and also the letter accepting and returning presents.

"The justice of peace of Ipiané will select from the natives of the suppressed community ten men, bachelors or married, of good conduct and assiduous in labor, and will deliver them to the citizen of the United States, Mr. Edward Augustus Hopkins, to be destined to work for him during one year in his establishment at San Antonio, with the monthly wages of three dollars, which he offers to pay, and providing victuals, upon the condition that every Saturday, after concluding the labors of the day, they can retire to their lodgings, and will present themselves the following Monday at daybreak; and that they will receive said salary every two months, on condition, also, that if any one of the ten individuals should happen not to be of good character required, they will be withdrawn with less wages for the days they have had hire in proportion to that assigned to men of labor, and will be supplied by men capable of performing the labors of the contract, it being recommended to said justice of peace to make the best choice of workmen. The same order will be understood on the same terms by the justice of peace of Guarambaré."

Letter of President Lopez, accepting presents.

ASUNCION, *November* 11, 1853.

MY ESTEEMED SIR: I had the pleasure of receiving your estimable note of the 9th instant, in which, pursuant to instruction, "the president and directors of the navigation company present the governor of the republic with a flag, worked in silk by the ladies of the shareholders of the company."

I have also received another letter of the same date, in which your honor offers for my acceptance a carriage, as a gift offered to my person. You will allow me to answer you on these two referred favors, accepting, as I do, with due appreciation, in the name of the government of the republic, the two mentioned presents; although your honor was pleased to express that the carriage was a particular offer to my person, because, appreciating as I do this declaration, I could not help remarking an inscription on a plate adhered to said carriage, "presented to his excellency the president of the republic," without expressing my name—a circumstance which does not allow my delicacy to accept it as made to my person, but to the governor, who, it is notorious, bears the title of the president of the republic.

With this friendly explanation, I am much obliged to your honor, and to the company which you represent, and beg you will have the goodness to accept what the collector general has orders to offer you, as a small demonstration of the esteem and gratitude of this government.

I have the pleasure of renewing to your honor the security of my sincere and friendly regards.

Your most obedient,

CARLO ANTONIO LOPEZ.

Mr. EDWARD A. HOPKINS,
Consul of the United States.

Encouraged by this reception, and yet more by our knowledge of the products of the country, consisting, among other things, of valuable woods, of which twenty varieties were sent us, of a large collection of gums and resins, including India rubber, many of which were analyzed by Doctor A. J. Hayes, a copy of which analysis was presented with the original memorial to the Department of State, and which furnished every encouragement to prosecute the enterprise with renewed zeal, and, still further, by the great profit of some 400 per cent. realized upon the manufactured tobacco of Paraguay, the company equipped a second expedition, which sailed in June, 1854, destined directly for Paraguay.

While the company were thus engaged at home, their agents had purchased a large building in Asuncion for a cigar factory, and had instructed for many months more than 100 operatives in that business; they had selected and purchased a mill site at San Antonio, four leagues from the capital, where their steam engine and saw mills were already in most profitable employ, and were engaged in setting up their other machinery, and had organized a system of trade with the people in the natural products of the country.

San Antonio is situated twelve miles south of the city of Asuncion,

in one of the most densely populated districts of Paraguay. Vessels of two feet greater draught of water can be taken alongside of the shore than can ever go to Asuncion all the year round, on account of the intervening bar of Lambaré. During our possession of it its business greatly increased, and eleven vessels were there at one time loading fruits, vegetables, &c., of the country, for exportation to the lower provinces. The advantage of the locality is seen at once, when we remember that it is exactly opposite the southern mouth of the Pilcomayo river, which comes down from the silver mines of Potosi, in Bolivia, and in full sight of inexhaustible forests in the Chaco, of the finest timber in the world, to be had for the cutting, and situated upon the immediate banks of the Pilcomayo, which would float it to the door of our mills. The saw mill was upon the immediate bank of the river Paraguay, which presented there a natural wharf of stone sufficient for vessels drawing fifteen feet of water. On the north side of the mill the Paraguay river received the permanent stream of San Antonio, the only one furnishing any water power within fifteen hundred miles of navigation from the ocean on either bank of the rivers Parana and Paraguay, which rivers, as d'Azara has long since published, offer no mill sites, nor sufficient declinations of stream or altitude of banks, to permit the construction of dams. The saw mill in operation at San Antonio, running ten hours in the day, cut over 700 feet of timber.—(See depositions of Ferguson and Boyd.) The price currents of Buenos Ayres show that the price of lumber in that market varies from fifty to sixty-two and a half cents per running vara of thirty four inches. The company had sent out, in the second expedition, eight additional saws, knowing that Buenos Ayres is one of the largest lumber markets in the world, and the supply of timber in the forests adjacent to San Antonio was inexhaustible, and that there was no other saw mill south of the equator east of the Andes, and no mill site for fifteen hundred miles on these rivers but our own. These saws alone would bring us $275,000 per annum. In reference to the cigar factory, the refuse or badly made cigars from the apprentices' hands, were sold at the door of the factory for ten dollars per thousand.—(See company books.) Cigars sold in Providence at twenty and thirty dollars per thousand, (see books of the agents in Providence,) cost two dollars and fifty cents to three dollars per thousand.—(See books of the company.) Hence the net profits were 400 to 500 per cent. At the time of stoppage we were making 250,000 per month, and should have been making, long ere this, if unmolested, at least one million per month. For 115 operatives, (the number at work when closed,) when another six months or a year had made them skilful, would make 300 per day each, or in twenty-six days, 7,800 per month, which, multiplied by 115, equals 897,000; for which estimate we refer with entire confidence to our own apprentice books now under seal, and also to any cigar makers in the United States or Cuba.

We had, as proved by our books, one hundred and forty people in our employ at the time in which Lopez shut up our factories, who were gaining from three to ten dollars per month—fabulous prices to be gained by Paraguayans, and never equalled before or since. What, then, would have been our gains if we had been allowed to place in

operation our sugar mills, flour mill, brick machine, planing mill, cotton gins, rice mills, &c., only awaiting their turns to be put up.

The price of common brown sugar was twenty-five cents per pound—cost of manufacture to us two cents; of bricks, twenty-four dollars per thousand—to us three dollars; of lumber, the running vara of thirty-four inches, fifty to sixty-two and a half cents—to us the manufacture ten cents; and all other things of first necessity in equal ratio. We should have had to-day in our employ fifteen hundred persons enriching and civilizing the country.

The second expedition took out some twenty-two additional artisans, among them machinists and engineers, saw mill men, coopers and packers, carpenters, joiners, and steamboat men for two steamers, all with their implements of industry—worthless in a country like Buenos Ayres, devoid of streams and trees. By the cooper establishment alone we expected to make many thousands of dollars per annum in saving the enormous quantity of hides wasted in Paraguay by packing in them the exports of the country, such as yerba, tobacco, sugar, molasses, (far better preserved in wood,) as well as in supplying the lower provinces, and the cities of Buenos Ayres and Montevideo with pipes and barrels now and always worth enormous prices.

On all this machinery, by the organic law of the country, we were, and still are, entitled to from five to ten years patent right.—(See decree of May, 1845.)

Imagine such an interest in the lumber trade of the whole valley of the Parana and La Plata, to say nothing of any other branch of industry! These are the thoughts and inducements which caused us to place our capital in that distant country. We have no hesitation in saying that, to the best of our belief, the full amount of indemnity claimed by us is far below what our attention, energies, and capital would have most surely given to us. California and Australia have done much more than we claim here for men who never meddled with the mines; whereas Paraguay and adjoining countries are Californias in wealth, with as much or more to offer to the enterprising man, under any government, save that of Lopez.—(See affidavit of Hale.)

It may well be supposed that we did not voluntarily abandon such brilliant prospects; that from no will of ours the fruits of this enterprise have turned to ashes on our lips. But it might excite surprise in a mind not familiar with the character and policy of the government of Paraguay, that its government should wantonly break up and destroy an enterprise so fraught with benefit to that country; but to one who has traced its presumptuous folly in the rejection of our treaty and its attack upon the Water Witch, it will be no surprise that it has treated American citizens with more indignity and wrong than it offered to the American government, or that toward our enterprise its conduct at last has been that of highhanded outrage, spoliation, and destruction.

To those familiar with its policy by residence in those countries, to such men as Captain Page and the French chargé, Guillemot, whose statements are before the committee, its conduct towards us is apable of easy solution; and they speak not merely their own

opinions, but, as they tell us, the concurrent voice of all in those countries who venture to express an independent opinion. The cause, indeed, of the conduct of Lopez is found in two facts: first, that his government is that of an absolute despotism, and his policy one of selfish and grasping monopoly. His government, a titular republic, but a real despotism, greatly resembles the system of Dr. Francia in its absolute character. Lopez issues his decrees from time to time, as he pleases, proclaims them by trumpeters in the streets, posts them up in two public places, and calls them the supreme law of the land. He has what is called a council and a congress, but the power of no emperor in christendom is more absolute than that of Lopez. In fact, the official correspondence in the Department of State, from sources most favorable to him, proves, and constantly asserts, that the president is the government of Paraguay.

He has departed from the policy of Dr. Francia, in his system of exclusion, but has only changed it; so that by his public decrees he invites foreign enterprise and intelligence to his country, and then endeavors to appropriate the benefit of the improvements and the wealth they bring to the coffers of himself and family. The Commercial Relations, vol. 1, published by our government, show some of the decrees of monopoly which he has issued, and the frivolous reasons which he gives for them.

In these facts we find the motives of his conduct, for our success excited his jealousy. The great profits of our business tempted his selfish monopolizing spirit. He applied to our leading operatives in the cigar business, already carried on by us extensively in Asuncion, to leave our employment and establish works for him.—(See affidavits of Morales, Font, Orihuela and others, taken on the spot.) They refused; and when, afterwards, he broke up the establishment, and forbade the employés to work longer for us, though they then had eight hundred and twenty-five dollars of advance wages from us, he had not the shame to wait for our withdrawal from the country, but immediately employed the operatives we had trained in a cigar factory in the name of his son Binancio. He rewards himself further, for the manufacture of these cigars in imitation of those of Havana, (some of our men were Cubans,) with freedom from export duty, (manufactured tobacco pays 15 per cent. export duty,) and fifty cents premium per thousand cigars from the national treasury.

We will now examine the methods he employed for the destruction of our enterprise.

In the first place, look at the decrees he published; in the second place, at his action against us; first indirect through the populace, and then direct and conclusive through his officials.

The despotism of the government and its monopolizing spirit are certainly no excuse for its violation of its own published decrees, to which we referred in the opening of our statement, and upon the faith of which we acted; or for its appropriation of the processes and improvements whose introduction he favored by acts as well as by decrees, but whose continued use and profits he has taken from us, and given, a part, at least, to his son.—(See Page's statement.)

The government of Paraguay proceeded to issue certain decrees re-

voking the title to lands in San Antonio, imposing regulations and impossible conditions in the conduct of our business, and divesting us of the privileges we had theretofore enjoyed. Some of these decrees we append, that the committee may see at once their frivolous, arbitrary, and *ex post facto* character, and that it was impossible, under them, to carry on our business in the country, since, by the 5th article of the decree of August 26, 1854, it is provided that "all meetings of foreigners, except for the ostensible object of visiting and innocent diversions, are forbidden by day and by night." Nor could they any longer purchase land for the prosecution of their enterprise, for by the 9th "the sale of lands to foreigners is prohibited until further orders."

The 12th, 13th, and 14th articles show also the *animus* of the government, which is not at all relieved by the vague promise in the 15th. The decree revoking the title of the San Antonio lands, admitting, for argument sake, the recital of facts which we do not, however, for a moment concede to be true, (the chief of which we will soon consider,) is open to these remarks: that the government took no exception to the act of its own officer ratifying the sale until the lapse of some five months; nor does it provide for the restoration of the land to the alleged owner, but the same is to be secured to the use of the government; nor was any compensation made to the company for their large expenditures and improvements upon it.

One of the chief reasons set up by Lopez for his conduct is the charge of fraud in procuring the title to a portion of the San Antonio lands. This is set up in his message to his congress, under date of 14th March, 1854, as well as in his decrees.

The charge is, that the mother of the minors who owned a portion of the land was induced to give the deed by the representation of our agent; that Lopez had authorized the execution of the deed without the ratification of the defender general of minors. Fortunately for us, the original document in our possession disproves this accusation. (We append a copy.) It recites in full the facts as they occurred, showing the technical legality of the sale and liberal price paid, more to the minors than the adults. No one ever complained but Lopez. He endeavored to obtain possession of the deeds, and forbade them to be carried from the country, refusing permits or passports, until Commander Page having announced that he should take the Americans away "forcibly if he must," Lopez submitted. So as to the mensuration, no one ever asked for it. But these pretexts are frivolous, as well as false, when offered in justification of his spoliation of so much property, built up under his eye and by his assistance in selling the materials and labor we used, and upon the faith of deeds bearing his rubric or seal of ratification. The provision with regard to the employment of laborers and peons practically deprived the agents of the company from availing themselves, after its publication, of any form of native labor.

There was another method of attack upon the company through the insults and abuse from the populace. Upon the first arrival in the country the people, like the government, treated the agents and employés with marked and uniform kindness. Gradually this course

of conduct changed, and insults, such as shouting after them in the streets, calling reproachful names, climbing up to the windows of the houses, throwing orange peels, cigars, and missiles into the rooms, &c., &c., were incessant.

Complaint was made of this conduct to the police, and soldiers were stationed at the houses for protection. But the insults and abuse were more extreme and violent when the soldiers were guarding them than before. (As to this abuse, see affidavits of Hines, Morales, and others.) Of this character, and springing from the same source, came the attack upon the brother of the consul, our agent, when riding with a lady in the vicinity of Asuncion. Our people were also exposed to abusive articles in the Seminario, the official gazette of Paraguay.

In reference to the excessively abusive articles of the Seminario for a term of four months, the "Comercio del Plata," of Montevideo, a journal founded by the illustrious Argentine, D. Florencia Varela, said, "that some of them were written in such a repugnant manner that, through respect to decency, one ought to abstain from reproducing them."—(See Seminario, No. 68.) The "Tribuna," of Buenos Ayres, (editorial of October 12, 1854,) also, in speaking of the language of Lopez in the Seminario, said: "In it he (Lopez) has used the dirtiest and most obscene language which has ever come from the mouth of any government." We might offer many proofs of the truth of these remarks, taken at random from the columns of the Seminario, and from official decrees signed by Lopez, and official notes signed by his secretary of state, but all bearing unmistakable internal evidence of his own head and hand. These diatribes were often directed against Americans in all parts of the world.—(See Seminarios, Nos. 67, 68, 69, 70, 83, 92, 94, some of which are exclusively devoted to this favorite topic.)

It was not by such methods alone that our enterprise was broken up and our agents expelled from the country. More summary and efficient measures were adopted by Lopez—nothing less than the actual presence of his officials in our cigar factories, mills, and workshops, forbidding the Paraguayans to work for us, closing all our establishments, and ordering the fences and sheds to be destroyed by fire. The evidence, in detail, of this forcible expulsion from our works, is contained in the affidavits of Ferguson, Boyd, and Morales, taken on the spot.

Lopez, through his officials, when in the very act of forcibly closing our workshops, declared "that the government did not care for the gilded guns of the Americans, but was prepared for any emergency that might arise."—(See close of Morales' affidavit.)

We ask leave to submit some statements regarding the resources and property of Lopez, from which redress for these injuries may be easily obtained.

The property of Lopez, or of the government of Paraguay, which is composed of himself and family, is enormously large. He owns hundreds of square leagues of land and thousands of cattle, more than one-half of all the houses in the city of Asuncion, now containing nearly 25,000 inhabitants. Stores open in Asuncion, and in every

other town in the country. He monopolizes the preparation and sale of the yerba maté, of which alone is exported above 175,000 arrobas per annum, and half as much more consumed in the country. (An arroba is twenty-five pounds.) Upon the yerba maté sold in Buenos Ayres he makes a profit of over six hundred per cent. He monopolizes also the manufacture of cigars in imitation of those of Havana, and rewards himself with a freedom of export duty upon them, and fifty cents premium per thousand from the national treasury, as before stated. He also owns all the tanneries in the country, and exports, by decree, his leather free from export duties. These two last articles, namely, hides and tobacco, manufactured, pay 15 and 16 per cent. export duty. He is largely engaged in commerce with England, to the amount of millions per annum.

The following is the list of the steamers he is known to have had on the rivers on the date of 15th September last, all of which have been placed there since ours, which was the first upon those waters:

	Name.	Tons.	Horse power.	Where built.
Man-of-war.....	Tacuaré.....	400	180	England.
Mer., propeller....	Rio Blanco.....	900	150	France.
Mer., side wheel...	Rio Negro.....	200	60	England.
Mer., side wheel...	Ipora.....	250	70	Paraguay.
Mer., side wheel...	Salto de Guayra	200	80	Paraguay.
Mer., side wheel...	Pampero (inn)	700	250	England.

Two others on the stocks in Paraguay. Engines, constructions and engineers all English.

It is not difficult to perceive that Lopez has taken for himself the navigation of his rivers, opened by the labors of others, and the action of the United States government, to the flags of all nations, in its treaty with the Argentine Confederation, of 10th July, 1853, and called "a treaty for the free navigation of the rivers Parana and Paraguay," and by subsequent treaty between Brazil and Paraguay, in 1856, opening these rivers to the commerce of the world. It is Lopez's infractions of this treaty which are the cause of the demonstrations against him at present threatened by Brazil.

Notwithstanding his narrow and selfish policy, the trade of the country is rapidly on the increase; for three years, from 1854 to 1857, by his own returns, it increased four-fold. And though commerce is carried on chiefly with him, or with houses in which he is interested, the number of arrivals at Asuncion in the single year 1854 was 160.

Could his spirit of selfish monopoly be broken, or could he be truly wise for his own interests, the commerce of Paraguay would be indefinitely increased. Its tea, capable with improved preparation of a near approach in quality to that of China, grows wild and in exhaustless abundance upon the hills of Paraguay. Its rare cabinet and dye-woods, with hides and tobacco, are already large articles of export to Europe.

And more than her own resources, are those of Bolivia and the rich provinces of Brazil, on the upper waters of these rivers, which must pass her gateway. These countries are inviting the commerce of the

world, and nothing but the policy of Paraguay excludes our American enterprise and commerce from their natural share.

Brazil is demanding her rights. It needs but the show of those "gilded guns of the Americans," and *our* rights will be promptly conceded. Time and iniquity are pressing heavily upon Lopez, and he must soon disappear from the political world.

The hand that shall first break his prestige and his power will be a hand of blessing to his people and to the world.

SAMUEL G. ARNOLD, *President.*
STEPHEN G. MASON, *Treasurer.*
RUFUS WATERMAN,
LEWIS P. CHILD,
W. M. BAILEY,
N. F. POTTER, per R. W.,
Committee appointed by vote of the Company.

Affidavit of William E. Hines.

William E. Hines, being duly sworn, deposeth and saith:

I am a citizen of the United States. I was for two years, from March, 1853, to May, 1855, the general cashier of the United States and Paraguay Navigation Company, and sailed from the United States with the first expedition, and was for about ten months a resident of Paraguay. I went there with Mr. E. A. Hopkins, on his first trip after he was named consul to Paraguay. He was received in a very flattering manner by the president of that republic in the presence of nearly all the Americans in the country, including the commissioned officers of the United States steamer Water Witch. Many favors were allowed him by the president and people. Indeed, upon our first arrival the people of the country tried every way in their power to show us attentions, treating us kindly and hospitably, and doing all in their power to make our stay among them as agreeable as possible. From their treatment we inferred that the government favored us and our expedition, and were our friends; for, in that country no native dare act as friend or foe without first receiving his lesson from his superiors. Gradually their kind treatment was changed, first from neglect to annoyance, and from annoyance to insults, till it became almost impossible to live in Paraguay with any comfort at all. Spies were about us to catch every word we might utter, and to watch us about our daily avocations, to repeat to their superiors every word, every act, no matter how trivial. Insults of various kinds were offered the American residents. My wife, a native of the United States, was some months resident with me in Paraguay. Her health was very delicate, and the annoyances and insults she was obliged to suffer had a serious effect upon her health. People have tried to pull her from her horse by catching at her habit when riding rapidly. Our house was beset with a crowd of native rabble, who would throw into our windows sand, stones, bones, oranges, or anything that was

within their reach. Upon trying to find the offenders, all would profess innocence. These things became so aggravating that I applied to the police for protection. A show of compliance was made. A guard of soldiers was stationed under my windows one evening, but that evening there were more missiles thrown into my windows than at any one time before, and of a more dangerous character, which, of course, led me to suppose that they were projected by the very soldiers themselves.

Paraguay is, nominally, a republic; but it is well known that President Lopez is the head and front of all that is done in the country. His power is as absolute as that of the Czar in Russia. He controls the most valuable commerce of the country by monopolies, and the government (Lopez) is by far the greatest merchant of the republic.

The United States and Paraguay Navigation Company had taken out merchandise for sale, agricultural implements, and valuable machinery for operating. A saw mill had been put in operation, and was doing a profitable business. A cigar manufactory, employing more than a hundred hands, had been some months in operation, and was proving as successful as the most sanguine could wish; and favorable opportunities were only wanting to start all our machinery. Upon first commencing in Paraguay the government, through the judges of peons, provided us with peons for our mechanical department, women and other laborers for our cigar factory, &c., &c. These laborers, from being the most humble and servile of dependants, gradually began to assume importance, and, through them, could we perceive the feelings towards Americans, from day to day, of those in power.

Our interests were valuable, and had not our operations been suspended in the manner they were, without adding one dollar of capital from home to what we had at sailing, I doubt not would now be worth to us in Paraguay not less than six hundred thousand dollars. This estimate does not include two steamers and a sailing vessel, merchandise, and machinery, subsequently sent from the United States by our company before they had received information of the gradual change of policy towards us in Paraguay.

The government of Paraguay possesses ample means, in silver and gold, to pay any demand our government may make upon them for reclamations, for damages and losses to our company; and, in the opinion of deponent, if two or three small vessels-of-war were sent to Paraguay to enforce the demand, there would be no difficulty in getting it settled.

Deponent further declares that had he had control of the two small steamers aforementioned, and a business been established with them between Paraguay and adjoining provinces, he would not, even at so early a day as this, have sold the business for four hundred thousand dollars. Their business would have been almost unlimited and the profits enormous.

WM. E. HINES.

UNITED STATES OF AMERICA, } ss.
Rhode Island District, }

In the city of Providence, this 10th day of August, A. D. 1857 subscribed and sworn before me.

JAMES W. PECKHAM,
Commissioner of the circuit court of the United States for said Rhode Island district to take affidavits, bail, &c.

Affidavit of Wm M. Hale.

The undersigned, a native of this city, thirty-five years of age, and a graduate of Brown University, accompanied the second expedition sent out by the United States Paraguay Navigation Company, sailing from this port, on the 28th of June, A. D. 1854, in the schooner E. T. Blodgett, owned and freighted by said company. The freight consisted of two steamers, two saw mills, cotton gin, steam boilers, and other machinery, designed for operation in Paraguay, besides several invoices of merchandise for the company's warehouse. The expedition was accompanied by competent ship builders, engineers, and other mechanics, including an experienced millwright.

Upon our arrival at Buenos Ayres we learned the position of affairs in Paraguay—the news of the rupture between Mr. Hopkins and President Lopez having just reached that city. In consequence of this rupture we were compelled to put up our steamers at the river Tigre, distant about twenty miles from Buenos Ayres, instead of proceeding direct to Asuncion, as we at first intended.

The steamers were, respectively, of 100 and 150 tons burden. The larger was originally planned and constructed for the navigation of the upper waters of the Parana and Paraguay rivers, her light draught rendering her especially adapted for shoal water. But as the company had at the time no larger steamer suitable for the navigation of the main river as far down as Buenos Ayres, they contemplated placing the schooner on the lower route, and forming a connexion with the steamer at Rosario, or some similar port, until such time as they could build or purchase a large steamer to take the place of the schooner, and then to transfer the steamer to the route from Asuncion to the upper provinces of Bolivia and Brazil. These provinces had not then been opened to commerce, and their only mode of reaching the seaboard was either by crossing the Andes to the Pacific coast, or by the overland route to Rio Janeiro. Each of these journeys was tedious and expensive, thus rendering the produce of the provinces of little value in the home market, so that it could have been bought by the agents of the company at such prices as, with their facilities for bringing to market by means of their steamers, would have yielded them enormous profits, besides opening a wide field for the introduction of the manufactures of our country. In addition to this, the government of Bolivia had offered a large bounty, both in land and money, besides valuable commercial privileges, to the first line of steamers that should be successfully established between that country and the Atlantic coast; all of which would have been secured by the company had the agreement entered into by President Lopez been fulfilled.

At the time of our arrival the only steamers on the river were some old English and American propellers, which were built for ocean navigation, and were poorly adapted for navigating the river, being very slow and of deep draught. As soon as our steamer was completed, she was placed on the route between Buenos Ayres and Corrientes, the highest point we could reach without entering Paraguay, and at once monopolized the travel on that section of the river. Although but a small steamer, and in some respects a third or fourth rate vessel, she did a profitable business. The price of passage at that time from Buenos Ayres to Rosario, a distance of 300 miles, was twenty-four dollars; and from the former point to Asuncion, a distance of about 1,000 miles, eighty dollars. This distance could easily have been accomplished by a first class steamer in three or four days. But allowing a fortnight for the round trip from Buenos Ayres to Asuncion and back, and estimating the number of passengers at only fifty each way, with a proportionate amount of freight, and the gross receipts for a single trip would amount to $15,000. Deduct one-half of this for expenses, and the net earnings of such a steamer for one year would have amounted to $195,000. This estimate is based upon the actual amount of travel on the river, which would, doubtless, have been greatly increased with the improved facilities for transportation, as it has been in all similar instances.

During my residence in Buenos Ayres I saw large quantities of Paraguayan lumber, all the provinces on the river being supplied with heavy timber from that source. The wood, in its general character, partakes of the nature of other tropical woods. It is generally heavy, compact, durable, and susceptible of a high polish, and is in general use for building purposes, as well as for cabinet work. The cedar of Paraguay, which is highly prized, is lighter than the other kinds of wood, and in its grain and finish strongly resembles the finer descriptions of mahogany, though much lighter than that wood. All this lumber was sawed by hand, leaving the surface very uneven and irregular, and unfit for market. Had the company been permitted to put their large saw mills into operation in Paraguay, the profits from this branch of business must have been incalculable, as the timber, notwithstanding the government monopoly, could have been bought at very low rates, and the superior product of their mills would have insured them the command of the market.

But, without the protection and favor of the government, which is an absolute despotism, none of these advantages could be secured. The president, though elected by the people, is supreme dictator, not only in all matters connected with the government, but also in all the private relations of its subjects, and no important trade can be carried on in his dominions without his consent and co-operation. Whilst, by law, enjoying a monopoly of the trade in timber and yerba, the two principal products of the country, he exercises a controlling influence in all matters of trade between his own subjects and foreigners.

A general system of espionage is established throughout the country and the adjoining provinces, even as far as Buenos Ayres, and any act committed by a resident of the country which meets his displeasure is promptly and effectually punished; if a native, by fine or im-

prisonment, and if a foreigner, he is driven from the country under one of the many pretexts which are never wanting to a despotic mind. This is fully illustrated by the system of petty annoyances adopted towards the agents of our company, and which no native of Paraguay would dare to perpetrate without the direct sanction of the government.

These facts are matters of general notoriety throughout the Spanish American provinces of the La Plata, and are gathered from frequent conversations with intelligent residents of Buenos Ayres, some of them being natives of Paraguay who had been compelled to leave their country from similar causes.

WM. M. HALE.

UNITED STATES OF AMERICA, }
Rhode Island District, } *ss.*

In the city of Providence, on this 1st day of September, A. D. 1857, sworn to and subscribed by the said William M. Hale, personally known to me to be the signer of the aforegoing statement or affidavit.

JAMES W. PECKHAM,
Commissioner of the Circuit Court of the United States for said Rhode Island district to take affidavits, bail, etc.

Decree of August 26, 1854.

ASSUMPTION, *August* 26, 1854.

Considering that some contraband trade has been discovered on the lower coasts, and some attemps have been made against public order and against the high respect due to the national authorities, it is resolved and decreed:

Article 1st. From the publication of this decree, every vessel which descends to the exterior will carry two officers of guard—the one to continue to the village of Pilar, and the other to be relieved at the ports Villeta and the villages of Oliva and Villa Franca; each guard relieved will return by post to his respective destination. This resolution will be observed in the same manner in all vessels ascending from the exterior.

2d. It is declared that pistols, all kinds of tucks, knives and cudgels are prohibited arms. Whoever is found with these arms in the streets will deliver them to the commissaries of police or to the commanders of rounds and patrols, warning being given to the owner to present himself at the police to give satisfaction for the infraction of this regulation.

3d. Every foreign officer who may have presented himself to that end to the government of the republic can use a sword by day and by night, having on his uniform.

4th. If, unfortunately, any person that should be found with prohibited arms should refuse to give them up, according to the terms of the preceding second article, and should proceed to make use of his

arms, he will be disarmed and conducted to the chief of police for his arrest; whilst the corresponding information is remitted to the government, it being well understood that the soldiers of the republic in commission and of the police are not to be without their arms across.

5th. All meetings of foreigners, except for the ostensible object of visiting and innocent diversion, are forbidden by day and by night.

6th. Every crew of foreign vessels accidentally being in the ports of the capital will retire to their vessels at sunset, and only with express permission of the captain of the port will any particular exception be made to this order in their cases.

7th. The existing order is hereby reproduced, that, half an hour after tattoo beating, all traffic in the streets will cease, with the caution that those persons who are under a necessity of going out from their houses after that hour will take lanterns with them; and that the provision is not in force in cases of public balls and general assemblies on fast days, since the appropriate police orders are in this respect already given.

8th. The public use of arms for shooting birds, at convenient hours, will continue as heretofore.

9th. The sale of lands to foreigners is prohibited until further orders.

10th. Preference will be given to the right of the state to purchase lands on the bank of rivers, in case an intention of alienating them exists.

11th. Every sale of lands, without the requisites of law, will be held null and void.

12th. Every foreigner who may have land legitimately acquired, but without judicial possession and demarcation, measurement and landmarks, will solicit from the government these requisites within six days after the publication of this decree.

13th. Every industrial or commercial factory unlicensed will be shut, if the persons interested do not take out a license within three days.

14th. The use of any foreign commercial firm in the republic is forbidden, without the express knowledge of the supreme government.

15th. Any manufacturing or commercial company can be established in the republic, those concerned presenting themselves, in the customary form, to the government, and will find adequate protection.

And, that it may reach the knowledge of all, let this be communicated to all concerned; let it be published by edict in the customary form, and also in the Seminario de Avisos.

Assumption, August 26, 1854, the forty-second year of the national independence.

CARLOS ANTONIO LOPEZ.
JOSÉ FALCON.

Considering the public convenience of maintaining in force, with respect to the hire of Paraguay day laborers, the existing regulations of the port of this capital concerning the wages of mariners by the

month or the voyage, in order to avoid contentions, it is resolved and decreed:

ARTICLE 1. For the present, and until otherwise ordained, every contract of foreigners with Paraguay laborers for any class of labor and occupation, will be made out by a simple document.

ART. 2. This regulation will be in force in contracts of thirty days and upwards, and will be put in execution eight days after the publication of the present decree. And, that it may come to the knowledge of all, let it be published by edict in the customary form, and also in the Seminario de Avisos.

Assumption, August 25, 1854, the forty-second year of the national independence.

CARLOS ANTONIO LOPEZ.
JOSÉ FALCON.

[Translation.]

Fifth seal of stamped paper for the year 1854.

ARMS OF PARAGUAY.—LONG LIVE THE REPUBLIC OF PARAGUAY!

In the city of Asuncion, capital of the republic of Paraguay, on the 11th day of March, 1854, before me, the notary ad interim of the civil court, and the witnesses who subscribe, personally appeared in my office Mrs. Dña. Elenteria Bedoya, widow of Don Ramon Thomas Zelada, and legitimate guardian of her children, (minor,) José Joaquin, and Maria Dolores Inocencia Zelada, a native and inhabitant of this capital, in whom I place full credit and know; and she said, that, having bargained with the señor general agent of the United States and Paraguay Navigation Company, Don Edward Augustus Hopkins, to sell him a piece of land situated in the district of San Antonio, composed of 2½ cuerdas, (cuerda is about 83 yards,) front to the east upon the public road which leads from the capital to the country, and from thence in depth to the river Paraguay, for the sum of thirty dollars each cuerda; but that, for the greater formality and security of this contract, she wished to verify it, with the consent of the general defender of minors, (judge of orphans,) because the said land belongs to her said two minor children. By virtue of this request, I caused advice thereof to be given to the señor defender general of minors, who having come in person to this act, and being informed of all which the señora widow had said with the view of the documents of the said lands which we had then present, he, the defender general, said that he agreed, in the name of the above said minors, that they could sell the said land to the general agent for the sum of thirty dollars each cuerda, because that the sale which was about to be verified was only a part of the lands inherited by the minors, the greater part in depth yet remaining to them on the opposite side of the road;*

* See plan.

and, also, that the co-heirs of the said minors have sold to the same señor general agent equal portions cut off, also, from the same body of land for the sum of twenty-five dollars the cuerda, which was the price to the original purchaser who paid it, although it included the portion of land on the other side of the road which is now dismembered, and remains to the sellers, as the above cited documents prove; and which, with due attention to the conformity and unanimity of these reflections, on the part of the defender general and the widow, this latter said that, by this present and public writing, she grants and confesses that she sells and gives in formal sale, from now forever, in the name of the above cited minor children in favor of the above expressed señor general agent, Don Edward Augustus Hopkins, or of those in whom may legitimately fall the right to this instrument, the above named piece of arable land, situate in the department of San Antonio, which the above expressed children possessed by paternal inheritance according as the already cited documents stated, which I have returned to the widow, because they contain even a yet greater portion of land which remains with the minors. The land sold is composed of 2½ cuerdas, in latitude and in longitude, all the distance which is found by its formal and judicial recognition between the lines which limit it, whichare east, front on the public road which passes through the district of San Antonio from the capital, and continues onward to the country. The opposite front, to the west, is on the river Paraguay, with the same latitude, or breadth, &c., &c.—(Simple old Spanish form of documents for real estate.)

Manuel Morales, being duly sworn, presents his documents of full naturalization as a citizen of the United States, issued by the supreme court of New York, October 23, 1851. He deposeth and saith: I am a native of the island of Cuba, and a naturalized citizen of the United States. I have read the note of the United States consul to the Paraguayan government, July 25, and know that part of it which relates to insults to American citizens generally, for many months past, to be true. I have been several times insulted myself, by cries in the streets, calling me brute, and barbaro, and carcaman. I am a merchant, in business in this city, and director of the cigar factory of the United States and Paraguay Navigation Company. I have been three times, twice to the chief of police and once to the judge of the peace of the district, as interpreter, with Mr. Hines, the general cashier of said company, now absent, to complain of bones, orange peels, sand, stones, &c., being thrown in at the windows of the agency. No alteration of the annoyances was experienced by these complaints. Propositions have been made to me by Nicolas Vasquez, the confidential judge of peace and man of all work of President Lopez, to seduce me from said company, promising me, on the part of the government, all facilities which I might want to carry on the business, for myself, of the cigar factory, provided I would leave the employ of the said company. I went in person to the collector of the port, and procured, upon the official stamp, price fifty cents, permission for Mr. John Peterson to embark his baggage at San Antonio, which I delivered to Mr. Peterson. I requested the consul to apply to the government for permission to whip the apprentice boys in the

cigar factory, in order to correct their laziness and bad habits; the punishments were asked for because without them it was impossible to keep order in the factory, and the punishments which the government states the consul asked for at my request are the usual punishments in vogue throughout all the country. I have had cigar women saved, through my intercession, from arbitrary corporal punishment by the justices of peace. I have never sent in the name of the consul to the chief of police, nor do I know of any one who has done so, to have peons and to sweep out the cigar factory. I have sole immediate control over the factory, and the consul, in his capacity of general agent of the company, has confined himself to giving me general instructions. I was educated in Providence, and have been for several years in commercial business in the city of New York.

MANUEL MORALES.

UNITED STATES CONSULATE IN PARAGUAY.

Sworn before me this 19th day of August, in the year of our Lord one thousand eight hundred and fifty-four.

EDWARD A. HOPKINS, [L. S.]
United States Consul.

George M. Boyd, being duly sworn, deposeth and saith: I am an American naturalized citizen. I was born in Ireland, and came to the United States before I came of age; having resided in the United States for twelve years. I am an engineer in the employ of the United States and Paraguay Navigation Company, and left the United States under the American flag, on board the steamer El Paraguay. I have lived at the establishment of said company for the last nine months, at San Antonio. I have never witnessed any maltreatment of the peons, and never knew of permission being refused them to remain there when sick; on the contrary, inducements have been held out to them to remain on the premises under such circumstances. They have always had plenty to eat. Their general character was bad. They have always been very lazy and insolent, and frequently left the ground without permission, and contrary to orders. I have read the note of the United States consul, of 25th July, to the Paraguayan government, and know his complaints of insults to American citizens generally to be true. I myself have been frequently hooted at on the public highway. I was present at San Antonio when Mr. Peterson embarked his baggage. The document marked A 1 is the official licence under which the baggage was embarked. It was brought to San Antonio by Mr. Peterson, and left there to be handed to the judge of peace. I handed it to him the first time he came to the house, and he said that it was none of his business; that it belonged to the gefe. The gefe never came for it, and it subsequently became mislaid, and has been but recently found. No inquiry of any sort was ever made after the document by the government officers, to my knowledge.

GEORGE M. BOYD.

CONSULATE OF THE UNITED STATES IN PARAGUAY.

Sworn before me this twenty-first day of August, in the year of our Lord one thousand eight hundred and fifty-four.

EDWARD A. HOPKINS, [L. S.]
United States Consul.

Manuel Morales, a citizen of the United States, being duly sworn, deposeth and saith: This morning, Monday, August 28, Mr. Nicolas Vasquez, justice of the peace of the district of Encarnacion, gave me a verbal order to close the cigar factory of the United States and Paraguay Navigation Company, of which I am director. I immediately communicated this order to the American consul, who sent a communication to the said Vasquez. The consul also gave me orders not to yield to verbal orders, but only to force or other competent authority. On my return from the custom-house, at half-past 9 a. m., where I had been to procure some letters, I found the cigar factory closed, and inquiring by what authority it had been done, I was told by Messrs. Font and Oritruela, my assistants, that it had been done personally by the said Nicolas Vasquez, who himself dismissed the women, and directed the doors to be shut up, as by order of the supreme government. When said Vasquez ordered me to shut up the factory in the morning, he said, further, that the government did not care for the gilded guns of the Americans, but was prepared for any emergency that might arise.

MANUEL MORALES.

CONSULATE OF THE UNITED STATES IN PARAGUAY.

Sworn before me this 28th day of August, A. D. 1854.

EDWARD A. HOPKINS, [L. S.]
United States Consul.

José Font, being duly sworn, deposeth and saith: This morning, August 28, 1854, about nine o'clock, Nicolas Vasquez, judge of peace of Encarnacion, came to the cigar factory of the United States and Paraguay Navigation Company, of which I am one of the foremen, and asked me why the people were still working. I replied that I could not order work to be stopped without directions from the general agent of the company. To this Vasquez gave me no answer, but went into the work-room and ordered all the women and boys to get up and leave the factory, which they immediately did, and the doors were closed by Mr. Oritruela. After this Vasquez likewise left.

JOSÉ FONT.

CONSULATE OF THE UNITED STATES IN PARAGUAY.

Sworn before me this twenty-eighth day of August, in the year of our Lord one thousand eight hundred and fifty-four.

EDWARD A. HOPKINS, [L. S.]
United States Consul.

Rafael Oritruela, being duly sworn, deposeth and saith: This morning, August 28, 1854, Nicholas Vasquez, judge of peace of Encarnacion, came, about nine o'clock, to the factory of the United States and Paraguay Navigation Company, where I am employed as one of the foremen. Said Vasquez said to me that, by order of the supreme government, the factory must be shut up and all the workmen and women must leave. I told him that my orders were not to shut up until forced to do so by some competent authority. He, the said Vasquez, then ordered the workmen to leave the establishment, and afterwards went into the back yard and ordered all the boys who were stripping tobacco to go likewise. When the work people were all gone Vasquez likewise left, and I closed the door.

RAFAEL ORITRUELA.

CONSULATE OF THE UNITED STATES,
In Paraguay.

Sworn before me this twenty-eighth day of August, in the year of our Lord one thousand eight hundred and fifty-four.

EDWARD A. HOPKINS, [L. S.]
United States Consul.

Manuel Morales, being duly sworn, deposeth and saith: This morning, Saturday, September 9, 1854, the chief of police sent for me at half-past six o'clock to meet him at the cigar factory of the United States and Paraguay Navigation Company. When I arrived there I found him with a soldier. He ordered me to take down the sign of the cigar factory, personally, which I refused to do unless I received orders so to do from the general agent of the company. The chief of police said that he did not recognize the general agent, and that if I did not take it down he would take me to prison. The "Water Witch" being absent, and having no protection, I could only order the sign to be taken down. It was then forced into my hands, and I was obliged by the soldier to carry it to the station house, and there deliver it to the chief of police. But I declare that I did it only by force, and not willingly, as he could wish to make it appear.

MANUEL MORALES.

Sworn to before me this ninth day of September, in the year of our Lord one thousand eight hundred and fifty-four.

EDWARD A. HOPKINS,
United States Consul.

George M. Boyd, being duly sworn, deposeth and saith: I am an engineer in the employ of the United States and Paraguay Navigation Company and engaged in running the steam saw-mill of said company at San Antonio. Last night, Monday, September 4, 1854, the work

people employed at the mill declared that they could not work any more, as the gefe of the department was coming to-day to discharge them. This morning, September 5, they all refused to work but one, who continued at his post, until eleven o'clock a. m., when the gefe came to the mill and asked how many persons we had. W. Ferguson, the mill-wright replied but one. The gefe said that we could not work any more without permission of the President, where upon he discharged the peon, and we were obliged to stop the mill.

GEORGE M. BOYD.

UNITED STATES CONSULATE IN PARAGUAY.

Sworn to before me this fifth day of September, in the year of our Lord, one thousand eight hundred and fifty-four.

EDWARD A. HOPKINS, [L. S.]
United States Consul.

Alexander Ferguson, being duly sworn, deposeth and saith: That on Monday night, September 4, 1854, the peons at work at the saw-mill of the United States and Paraguay Navigation Company, of which I am mill-wright, came to me and said that they could not work any more by order of the judge of the peace. I then paid them what was due. Next morning there was only one who was willing to work, who asked me if I did not want his help. Another said he would work if I made a private contract with him and did not allow it to be known, as, if it got out, he was afraid of the consequences. We kept the mill at work until about 11 o'clock a. m., at which time several soldiers came down and demanded my presence at the house with all the peons who were at work on the place. I went to the house and found the gefe of the department, with a number of soldiers and peons. The gefe questioned me as to the number of peons then at work. I replied but one, and that the rest had refused to work and left the premises. He talked some time with the peon in Guarain, and the peon interpreted that he could not work any more without permission of the President. It is my impression that the gefe said the same; but not understanding him very well, I cannot be certain. Immediately after dinner, the father of the woman who cooked for us, came to the house and said that he was obliged to take his daughter away by order of the judge of peace and chief, and went off with her in a great hurry, saying he was afraid to stay any longer than was necessary. Being then left entirely without help by order of the government, we had to stop the mill and I had to cook my own supper. In reference to the machinery of the said company at San Antonio, it is very heavy, and utterly impossible to remove it at present, without help of any kind.

ALEX. FERGUSON.

UNITED STATES CONSULATE IN PARAGUAY.

Sworn to before me this sixth day of September in the year of our Lord one thousand eight hundred and fifty-four.

EDWARD A. HOPKINS, [L. S.]
United States Consul.

Alexander Ferguson, being duly sworn, deposeth and saith: I was mill-wright and major domo of the establishment of the United States and Paraguay Navigation Company, at San Antonio. About half-past seven o'clock on Tuesday morning, September 12, Judge Basquez presented himself to me at the outer gate of the house at San Antonio, and asked me if Don Eduardo (Mr. Hopkins) had come there that morning or the evening previous. On being answered in the negative, he replied that he (Mr. Hopkins) had promised to be there, or write, by eight o'clock that morning, for the purpose of taking an account of the property there. He retired thereafter, on saying that he would return in a short time. Soon thereafter Mr. Morales arrived with a note to me from Mr. Hopkins, and one enclosed to Judge Vasquez. Vasquez returned, and after a lengthy conversation with Mr. Morales, which Morales interpreted to me, the result was that Vasquez refused positively to take an inventory or any account of the property beyond the line of the two and one-half cuerdas mentioned by him, as being the positive extent of his instructions from his government. A cuerda is about eighty-three yards or varas Spanish. But Vasquez promised to make a note in the inventory of anything on the remaining portion of the land or premises. This promise he afterwards refused to fulfill. About three p. m., Vasquez, with several government officers and other attendants, returned to the house and informed me that they were ready to take an account of the heavy pieces of machinery in and around the house, that they might be removed early the next morning. He did so, leaving at dark, after saying that he would return on the morrow with sufficient force to remove the property. At daylight of the 13th instant, the peons (laborers) began to assemble outside of the fence. About sunrise Judge Vasquez arrived with his attendants. A portion of the fences were torn up to open a new and shorter road. Afterwards more than a hundred peons inundated the house and back yard, and some forty ox-carts assembled near the house. They immediately removed the machinery, the judge checking off the articles as they passed him. We then proceeded with the inventory, including the chairs and tables which he had refused to include the evening previous. About eleven o'clock Mr. Morales, who acted all this time as interpreter, informed me that Vasquez ordered us to quit the premises immediately after concluding the inventory. This order was unexpected, as Mr. Hopkins had written to me that the decree of the Paraguayan government allowed four days to evacuate the house and premises. They carried away everything in the house and kitchen, even to the corn for the horses. As it was impossible to remain in an empty house, I made application to the chief of the department, through Mr. Morales, for the ox-carts to bring our baggage into town. It was impossible to obtain these at the customary price of 10 reals, and we were obliged to pay 14 reals, the chief saying that he had no authority in the matter. The conduct of the peons was insolent and thievish. I further state that Judge Vasquez attempted to make me sign the inventory in the middle thereof—that is to say, the portion taken the previous date. Nothing further occurred worthy of notice, after we had despatched our ox-carts, until half-past seven o'clock p. m.;

the said judge wanted me to sign an incomplete inventory of the company's property at San Antonio. I replied to him that it did not include the the whole. The judge's argument was that he only wished the evidence of what he had done, and that my signature would only certify to that extent and no further. He drew up a note at the post of the inventory to that effect, as I understand it, which I signed. I demanded an authenticated copy of the inventory. As it was then nearly nine o'clock p. m., and we had no place to sleep nor anything to eat, we were compelled to leave for the general agency of the company in town, where we arrived at eleven p. m. The copy of the inventory not being ready, the judge promised to furnish one to Mr. Morales in a short time. The judge also refused to include smoe five cords of firewood in the inventory, which were indubitably on the premises. I left the house, by the positive order of the judge, with him and his people in full possession. I forgot to state that Judge Vasquez refused to include the domestic animals, *i. e.*, horses, mules and oxen, which were on the premises of two and one-half cuerdas; the fence being torn open, they were left to wander away.

ALEXANDER FERGUSON.

Sworn to before me this fourteenth day of September in the year of our Lord one thousand eight hundred and fifty-four.

EDW. A. HOPKINS,
United States Consul.

George M. Boyd, being duly sworn, deposes and says, as follows: I was engineer of the United States and Paraguay Navigation Company's establishment at San Antonio. I have read the above deposition. I was present at the taking of the inventory of the property of said company, of which the foregoing deposition speaks. In reference to the action of Judge Vasquez, the removal of the company's property and the inventory, said deposition is correct. I also signed the incomplete inventory as above described; of the remainder of the deposition I have no knowledge.

GEORGE M. BOYD.

Sworn before me this fourteenth day of September, in the year of our Lord one thousand eight hundred and fifty four.

EDW. A. HOPKINS,
United States Consul.

Manuel Morales, who has heretofore deposed in these recent difficulties, being duly sworn, deposeth and saith: I went to San Antonio at the request of Mr. Hopkins to serve as interpreter, for the purpose, as he said, of preventing Messrs. Ferguson and Boyd from signing any paper which they might not understand, and which might be intended

to deceive. I have read the foregoing deposition of Mr. Ferguson, and I declare that it is true in all its parts, which I witnessed after my arrival at San Antonio. After I delivered to Mr. Vasquez a letter from Mr. Hopkins, he sent an express rider to town. He did not take any movement until the return of the messenger, at about three o'clock, although he had promised to commence operations at one o'clock p. m. Judge Vasquez attempted, with me, to make Mr. Ferguson sign a note that he (Ferguson) only allowed him to take an inventory of the things in the house. I refused it, telling him that he well knew that Mr. Hopkins had insisted upon taking an inventory of all the property of the company at the establishment of San Antonio. Vasquez then said that the Americans were brutes and barbarians, (*brutos y barbaros*,) and that Mr. Hopkins did not care how he insulted the Paraguayan government with his crazy demands. I replied to him to moderate his language—that we were civilized people. He then ceased.

MANUEL MORALES.

Sworn to before me this fourteenth day of September, in the year of our Lord one thousand eight hundred and fifty-four.

EDW. A. HOPKINS,
United States Consul.

Alexander Ferguson, mill-wright, and George M Boyd, engineer, being duly sworn, depose and say, in answer to a demand from us of E. A. Hopkins, general agent of the United States and Paraguay Navigation Company, that the average day's work of about ten hours of the steam saw-mill of the said company at San Antonio would cut more than seven hundred running feet of lumber.

ALEXANDER FERGUSON,
GEORGE M. BOYD.

Sworn to before me this eighteenth day of September, in the year of our Lord one thousand eight hundred and fifty-four.

EDW. A. HOPKINS,
United States Consul.

UNITED STATES CONSULATE, *Ascension.*

Certified to by me as a true and faithful copy of the original deposition now on file in this office. In proof whereof, I have caused the seal of my consulate to be hereunto affixed, this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and fifty-four.

EDW. A. HOPKINS,
United States Consul.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 61.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1858.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 132.]

The Committee on Naval Affairs, to whom was referred the petition of Edward D. Reynolds, purser, have had the same under consideration, and beg leave to report:

That the petitioner, while acting as purser on board the United States ships Warren and Southampton, during the Mexican war, was appointed by Commodore Jones, then commanding the squadron, to receive and disburse, as special agent, the money known as "military contributions." For this service and responsibility, which is acknowledged by all the naval authorities as "extra," he claims a commission of two and a half per cent. on said moneys. The Secretary of the Navy, finding no existing law that authorized him to allow this commission, was compelled to decline paying it. Since then Congress has, by special acts, granted this compensation to two other pursers for performing the same duty, to wit, William Speiden and Samuel Forrest.

The committee, believing that the petitioner is justly entitled to the compensation he asks, and that, after the precedents referred to, it cannot be reasonably refused, report the accompanying bill.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 62.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1858.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Joint Resolution S. 18.]

The Committee on Foreign Relations, to whom was referred the resolution of the Senate instructing them to inquire "whether it is in the contemplation of the government of Turkey to send to this country an officer of rank in their navy with a view to obtain information concerning American improvements in naval architecture and equipment, and to superintend the construction of one or more vessels of war for the Turkish navy at the ship yards of this country; and in such case, whether any, and what, steps should be taken by this government to manifest its good will towards the government of Turkey, by giving to such officer an appropriate reception, and otherwise to further the objects of his mission," have had the same under consideration, and now report:

To obtain the information required, the committee communicated the resolution of the Senate to the Secretary of State, and received in reply from him a copy of a letter from the honorable Carroll Spence, minister of the United States at Constantinople, to the Secretary of State, informing this government of the purpose of the government of Turkey to send to the United States Vice Admiral Mehmed Pasha, of the Turkish navy, accompanied by other officers, to superintend the construction of a three-decked ship which the Sultan had ordered should be constructed at one of the ship yards of the United States; and that the minister of foreign affairs of the Sublime Porte had asked of Mr. Spence such letters of recommendation for the vice admiral to the officers of this government as would best facilitate the objects of his mission. The letter of Mr. Spence accompanies this report.

The committee agree with the minister that the mission referred to is one of interest to the country, not only as evidence of the confidence of the government of Turkey in the skill of our naval architects and mechanics, but also of a like confidence in the liberal disposition of the government of the United States to extend to that of Turkey every advantage in their power to insure the construction of a vessel that may realize the high expectations justly formed by the Sultan from

the science and skill of the naval constructors of the United States. And the committee are further of opinion that the occasion is a fit one to renew to the government of the Sultan evidences of the good will and friendly feeling of the United States, by receiving this high officer of that government in a manner becoming his rank and the character of his mission.

Such occasions of international courtesy are not without their fruits in cementing the good will and conciliating the good offices of nations toward each other, whilst their mutual interests are advanced by encouraging intercourse, and thus opening new channels of commerce.

As a like instance, the committee advert to the reception given under the sanction of Congress, in the year 1850, to Amin Bey, an officer of the Turkish navy, and who came to the United States to travel for general information, with the sanction of his government, though not otherwise introduced than by our own minister.

The committee append to this report the letter of Mr. Spence, and his correspondence with the government of Turkey.

Mr. Spence to Mr. Cass.

[Extract.]

[No. 52.] LEGATION OF THE UNITED STATES,
Constantinople, November 8, 1857.

SIR: I have the honor to enclose you a copy of a letter addressed to me by his Highness Ali Pasha relative to the visit of Mehmed Pasha to the United States.

From this letter you will learn that the Sultan has determined to construct a vessel-of-war of three decks in the United States, and that I am requested to furnish Mehmed Pasha with letters to such of our public functionaries as may be of service to him in carrying into effect the intentions of the Sultan.

The Turkish authorities are particularly desirous that the vessel should not only be one which will justify the Sultan's choice of the country in which it is to be constructed, but they appear very desirous that the Pasha should be received with becoming distinction in our country.

The opinion which some individuals would be pleased to promulgate here, relative to the want of sympathy on the part of our government for Turkey, renders them particularly solicitous in reference to the action of our government in this matter. Since my stay here, it has been my endeavor to correct any opinion unfavorable to my government, and I am glad that the Sultan has given me a palpable proof of the success of my efforts. This proof, however, elicits from me a sincere desire that our government should testify its appreciation of the friendly disposition of the Sultan and of the compliment paid our mechanics by him, by extending towards his agent such acts of courtesy as would be gratifying to him.

I would therefore suggest to you the propriety of appointing some

person on the part of our government to receive the Pasha, and of inviting him to make a tour through the United States at the expense of the government.

This is the first time a Turk of any distinction has visited our country; and as the visit on this occasion is connected with a matt r which will redound to the benefit of our mechanics, it would, in my opinion, be both proper and politic on the part of the government of the United States to treat him in such a manner as would be gratifying to the Sultan.

A few years ago Congress appropriated $10,000 to defray the travelling expenses of a Turkish officer of inferior rank, without any political distinction; it would therefore be mortifying to a Pasha to be treated with less consideration.

I have every reason to believe that the action of our government towards Mehmed Pasha, will be particularly noticed by the Sultan and by the Sultan's brother-in-law, who is now minister of the Turkish marine.

* * * * *

Mehmed Pasha will be accompanied by one or more Turkish officers, who speak English.

Perhaps it would be well for me to inform you, that when the treaty between Turkey and the United States was made the Turks insisted upon inserting in the treaty a stipulation concerning the construction of vessels in the United States. This stipulation was, however, omitted, and assurances were given the Ottoman government, by the negotiators of the treaty, that the government of the United States would, whenever the Sublime Porte desired to construct vessels in the United States, give its agents the benefit of its advice, &c.

I have the honor to be your obedient servant,

CARROLL SPENCE.

[Translation]

SUBLIME PORTE, DEPARTMENT OF FOREIGN AFFAIRS,
November 5, 1857.

MR. MINISTER: The vice admiral, Mehmed Pasha, accompanied by Major Sulieman Efendi, proceeds to America, by order of the imperial government, in order to superintend the operations of building a three-decked vessel, which the imperial admiralty has determined to have constructed in a ship yard of the United States.

I have the honor to request you, Mr. Minister, to be so good as to write and transmit to me letters of recommendation for that superior officer to such of the authorities as you shall deem proper, the assistance of whom is indispensable to facilitate the accomplishment of his mission.

I embrace this opportunity to offer to you, Mr. Minister, the assurance of my perfect consideration.

ALI PASHA.

MR. CARROLL SPENCE,
Minister resident of the United States
of America at Constantinople.

And in consonance with these views, recommend the adoption of the accompanying joint resolution,

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 63.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1858.—Ordered to be printed.

Mr. CLAY submitted the following

REPORT.

The Committee on Pensions, to whom were referred the petition and papers of Jane Stoneham, ask leave to report:

This petitioner alleges and proves that she is the widow of Henry Stoneham. Record evidence is also adduced, showing that one Henry Stoneham served for more than two years in the Virginia continental line; but the petitioner has failed to prove that her husband was the *bona fide* Henry Stoneham who so served.

It is alleged and proved likewise that the said Stoneham, or one Henry Stoneham, was at the battle of Guilford Court-house, in North Carolina; but this is no evidence that he was in the Virginia line, or that he served six months, if he was therein, because it is well known that those were Virginia *volunteers* who engaged in that battle.

The petitioner asks for a pension in consideration of the revolutionary services of her husband; but, as your committee is of opinion that the evidence adduced is not sufficient to establish her claim, the following resolution is recommended for adoption:

Resolved, That the said petition be not granted.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 64.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1858.—Ordered to be printed.

Mr. EVANS submitted the following

REPORT AND RESOLUTION.

[Resolution printed as agreed to.]

The Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred a resolution in the following words, viz: "Resolved, That the Secretary of the Senate be, and he is hereby, directed to pay to Cornelius Wendell, out of the contingent fund of the Senate, the sum of fifteen cents per hundred pages for twenty thousand copies of the Opinions of the Judges of the Supreme Court of the United States in the case of Dred Scott vs. *John F. A. Sandford," have considered the same, and submit the following report:*

On the 11th of March, 1857, the following resolution was submitted by Mr. Benjamin, viz:

"*Ordered*, That the Secretary of the Senate obtain, for the use of the Senate, from the reporter of the decisions of the Supreme Court, twenty thousand copies of the Opinions of the Judges of the Supreme Court in the case of Dred Scott *vs.* John F. A. Sandford, the same to be furnished as an extract from the forthcoming volume of the reports of the decision of that court during the December term, 1856, and that the same be paid for, out of the contingent fund of the Senate, at a rate not exceeding fifteen cents per hundred pages, provided the same shall be delivered, stitched, with paper covers, in pamphlet form."

This resolution was referred the next day (March 12) to the Committee to Audit and Control the Contingent Expenses of the Senate. On the same or the next day the committee met to consider this and some other matters which had been referred to them. On consultation, it was thought a different mode of obtaining the same result was preferable, and it was agreed to submit, as a substitute for the said resolution, the following:

"*Resolved*, That there be printed by the printer of the Senate, for the use of the Senate, twenty thousand copies of the Opinions of the Judges of the Supreme Court in the case of Dred Scott *vs.* John F. A.

Sandford, the same to be stitched, with paper covers, in pamphlet form, provided that the copyright of the reporter can be purchased for fifteen hundred dollars; the expense incurred in the execution of the above resolution to be paid out of the contingent fund of the Senate."

This expense, according to an estimate furnished by the Superintendent of Public Printing, would amount to four thousand four hundred and twenty dollars, exclusive of the copyright and the clerk's charges for copying. A report was accordingly prepared to carry out this decision of the committee, but the Senate having resolved to adjourn on the 14th at one o'clock, no opportunity was offered to present it with any expectation that it could be acted on. On the day of the adjournment—but whether before or after is not recollected with certainty—there was a meeting of certain members of the Senate who belong to the democratic party, at which there was an understanding that the report of the case above stated should be printed, and if the Senate refused to order the payment it should be paid for by those who sanctioned it. The statement of what was done by the said meeting is made by the chairman of this committee, who was present at the meeting, and assented to the agreement. How, or by whose direction, the work has been done, is unknown to the committee; but the work has been done, and has either been or is ready for distribution among all the members of the Senate.

A majority of the committee have agreed to recommend to the Senate the payment of a reasonable compensation to the printer for printing the said report, but in doing so they are not disposed to go beyond the estimates furnished by the Superintendent of Public Printing. These, with the addition for the copyright, and a small sum paid by the printer to the clerk of the Supreme Court for copying, amount to six thousand one hundred and fifty dollars, and is about a thousand less than would be paid under the resolution referred to the committee.

In making this recommendation, your committee are influenced by these considerations:

1. If the report agreed on by the committee at the close of the extra session in March last had been made and acted on, no doubt is entertained that the Senate would have concurred.

2. There had been discussed in that case great constitutional questions. The argument was full and elaborate on both sides, and it was important that these opinions should be published in some authentic form, so that the people of all political parties might have the means of deciding for themselves.

The committee submit, as a substitute for the resolution referred to them, the following:

Resolved, That there be paid, out of the contingent fund of the Senate, to Cornelius Wendell, the sum of six thousand one hundred and fifty dollars, as a compensation for publishing twenty thousand copies of the Opinions of the Judges of the Supreme Court in the case of Dred Scott *vs.* John F. A. Sandford; the said sum to be in full for all charges incident to the said publication.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 65.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 15, 1858.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Bill S. 134.]

The Committee on Foreign Relations, to whom was referred the memorial of J. E. Martin, esq., acting consul of the United States at Lisbon, praying compensation for diplomatic services, have had the same under consideration, and now report:

That this subject was referred to the Committee on Foreign Relations at the 1st session of the 34th Congress, and a report made, accompanied by a bill for the relief of the claimant. Upon full examination, this committee, concurring in the views taken in that report, hereby adopt the same and present it as theirs, and recommend the passage of the bill which accompanies it.

IN THE SENATE, *May* 20, 1856.

The Committee on Foreign Relations, to whom was referred the memorial of J. E. Martin, esq., acting consul of the United States, praying compensation for diplomatic services, have had the same under consideration, and now report:

It appears from the memorial that on July 19, 1850, on the recall of Mr. J. B. Clay, chargé d'affaires of the United States at Lisbon, the archives of the legation were placed in the hands of the memorialist, then the acting consul of the United States at that port. That from that time to June 15, 1851, when Mr. C. B. Haddock, the successor of Mr. Clay, arrived in Lisbon, the entire duties and responsibilities of the legation rested upon and were performed by him. That during that time the fees and emoluments derived from the consulate were insufficient to pay the current expenses of the office, and that he has received no compensation whatever for the additional duties and responsibilities devolved upon him by having the charge of the legation.

The statements of the memorial are fully sustained by a letter from the Secretary of State, dated February 29, 1856, as to the time during which the affairs of our legation at Lisbon remained in Mr. Martin's charge, and the justice of his claim for compensation is strongly urged

in a letter from Mr. Haddock, United States chargé d'affaires at Lisbon, dated January 18, 1853.

Regarding this case as being within the principle heretofore established in the allowance of similar claims, the committee report a bill for the relief of the memorialist, and recommend its passage.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 65.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1858.—Ordered to be printed.

Mr EVANS submitted the following

REPORT AND RESOLUTION.

[Resolution printed as agreed to.]

The Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred a resolution in the following words, viz: "Resolved, That the Secretary of the Senate be, and he is hereby, directed to pay to Cornelius Wendell, out of the contingent fund of the Senate, the sum of fifteen cents per hundred pages for twenty thousand copies of the Opinions of the Judges of the Supreme Court of the United States in the case of Dred Scott vs. *John F. A. Sandford," have considered the same, and submit the following report:*

On the 11th of March, 1857, the following resolution was submitted by Mr. Benjamin, viz:

"*Ordered*, That the Secretary of the Senate obtain, for the use of the Senate, from the reporter of the decisions of the Supreme Court, twenty thousand copies of the Opinions of the Judges of the Supreme Court in the case of Dred Scott *vs.* John F. A. Sandford, the same to be furnished as an extract from the forthcoming volume of the reports of the decision of that court during the December term, 1856, and that the same be paid for, out of the contingent fund of the Senate, at a rate not exceeding fifteen cents per hundred pages, provided the same shall be delivered, stitched, with paper covers, in pamphlet form."

This resolution was referred the next day (March 12) to the Committee to Audit and Control the Contingent Expenses of the Senate. On the same or the next day the committee met to consider this and some other matters which had been referred to them. On consultation, it was thought a different mode of obtaining the same result was preferable, and it was agreed to submit, as a substitute for the said resolution, the following:

Resolved, That there be printed by the printer of the Senate, for the use of the Senate, twenty thousand copies of the Opinions of the Judges of the Supreme Court in the case of Dred Scott *vs.* John F. A. Sandford, the same to be stitched, with paper covers, in pamphlet form, provided that the copyright of the reporter can be purchased for

fifteen hundred dollars; the expense incurred in the execution of the above resolution to be paid out of the contingent fund of the Senate."

This expense, according to an estimate furnished by the Superintendent of Public Printing, would amount to four thousand four hundred and twenty dollars, exclusive of the copyright and the clerk's charges for copying. A report was accordingly prepared to carry out this decision of the committee, but the Senate having resolved to adjourn on the 14th at one o'clock, no opportunity was offered to present it with any expectation that it could be acted on. On the day of the adjournment—but whether before or after is not recollected with certainty—there was a meeting of certain members of the Senate who belong to the democratic party, at which there was an understanding that the report of the case above stated should be printed, and if the Senate refused to order the payment it should be paid for by those who sanctioned it. The statement of what was done by the said meeting is made by the chairman of this committee, who was present at the meeting, and assented to the agreement. How, or by whose direction, the work has been done, is unknown to the committee; but the work has been done, and has either been or is ready for distribution among all the members of the Senate.

A majority of the committee have agreed to recommend to the Senate the payment of a reasonable compensation to the printer for printing the said report, but in doing so they are not disposed to go beyond the estimates furnised by the Superintendent of Public Printing. These, with the addition for the copyright, and a small sum paid by the printer to the clerk of the Supreme Court for copying, amount to six thousand one hundred and fifty dollars, and is about a thousand less than would be paid under the resolution referred to the committee.

In making this recommendation, your committee are influenced by these considerations:

1. If the report agreed on by the committee at the close of the extra session in March last had been made and acted on, no doubt is entertained that the Senate would have concurred.

2. There had been discussed in that case great constitutional questions. The argument was full and elaborate on both sides, and it was important that these opinions should be published in some authentic form, so that the people of all political parties might have the means of deciding for themselves.

The committee submit as a substitute for the resolution referred to them the following:

Resolved, That there be paid, out of the contingent fund of the Senate, to Cornelius Wendell, the sum of six thousand one hundred and fifty dollars, as a compensation for publishing twenty thousand copies of the Opinions of the Judges of the Supreme Court in the case of Dred Scott *vs* John F. A. Sandford; the said sum to be in full for all charges incident to the said publication.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 66.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 15, 1858.—Ordered to be printed.

Mr. SEBASTIAN made the following

REPORT.

[To accompany Bill S. 135.]

The Committee on Indian Affairs, to whom was referred the petition of W. Y. Hansell, William H. Underwood, and Samuel T. Beecker, administrator of Samuel Rockwell, beg leave to report:

The claim of the petitioner is for three years' professional service as attorneys and counsellors to the Cherokee nation of Indians.

By the 10th section of the treaty of 1835 it is provided that "the United States also agree and stipulate to pay the just debts and claims against the Cherokee nation, held by citizens of the same; and also the just claims of citizens of the United States for services rendered to the nation, and the sum of $60,000 is appropriated for this purpose."

A question having early been made as to the construction of this section of the treaty, the Secretary of War submitted the same to the Attorney General during the administration by which the treaty was made, and on the 20th April, 1837, the Attorney General communicated his opinion thereon, in which he says: "I construe the clause as though the phraseology had been 'and also the just claims of citizens of the United States for services rendered to the nation, for which purpose the sum of $60,000 is appropriated.' This, says the Attorney General, I think, is the precise grammatical effect of the language used, and in a case of doubt the grammatical construction should be preferred, unless plainly repugnant to the probable intent. In the present case the grammatical construction will produce no injustice, whereas the extension of the appropriation to both classes of cases enumerated in the clause might do great injustice. It is, moreover, in accordance with the statement of Mr. Schermerhorn, who informs us that the sum of $60,000 was named in the first draught of the article, exclusively with reference to the last description of claims."—(See Opinions of Attorneys General, 3 vol., 208.)

The same construction has been given by the Judiciary Committee of the Senate, to whom this claim has been heretofore referred.

The committee also find that the board of commissioners, on the 20th November, 1838, referred this claim to certain distinguished citi-

zens of Georgia, to ascertain the proper amount that should be awarded for their professional services, under the following instructions:

"The claimants being dissatisfied with the amount allowed on their claims, and the board of commissioners, relying on your competency, from your long practice as attorneys in the courts of Georgia, to decide upon the merits of the several claims, hope that you will take them into consideration, and report to them your opinion hereon at as early a day as practicable. Any three of those selected will be competent to make the desired report."

On the 10th December of same year the following report was made:

"The undersigned, in compliance with your request, in the submission of the matters of account of Messrs. Hansell, Rockwell, and Underwood, against the Cherokee nation for professional services rendered as counsel for the Indians, have the honor to report that, after a careful examination of the several items and charges in the accounts submitted, and a comparison with charges by professional gentlemen in the middle section of Georgia, and due consideration thereon, they are unanimously of opinion that Mr. Hansell should receive the sum of $24,588; Mr. Rockwell should receive $22,920, and Mr. Underwood the sum of $28,692—subject to be diminished by the sums heretofore paid them, respectively."

This report was signed by Nathaniel C. Sayre, Edward Tracy, Hiram Warner, Washington Poe, and Henry G. Lamar.

Instead of acting on this report, the board of commissioners referred it to the Secretary of War, who decided that he had no authority to act on the same, and the parties were finally driven to Congress.

The committee believe that the parties are justly entitled to the relief prayed for by them, and they report a bill for the sums still due and unpaid. They beg leave also to refer to the report made by Mr. Berrien, from the Judiciary Committee of the Senate, and to adopt the same as part of their own report.

IN SENATE OF THE UNITED STATES, *September* 20, 1850.

Mr. BERRIEN made the following report:

The Committee on the Judiciary, to whom was referred the memorial of W. Y. Hansell, W. H. Underwood, and the representatives of Samuel Rockwell, ask leave to report:

That the memorialists were the counsel of the Cherokee nation, attending for the space of three years to a great multitude of cases in different circuits of the State of Georgia; that they were solicited by the commissioner who negotiated the treaty of 1835 to aid in the negotiation, with the assurance that their claims should be provided for in the said treaty; that these assurances were given by the commissioner, Mr. Schermerhorn, and the then President of the United States, General Jackson; and the sum of $60,000 was stipulated in the treaty to be

applicable to their claims alone. This fact is acknowledged by the commissioners, and the fact that the treaty could not have been negotiated without the aid of your memorialists is also stated by Mr. Schermerhorn, the commissioner who negotiated the treaty. The claims of the memorialists were presented to the commissioners appointed to carry the treaty into effect, and were by them referred to a committee of Indians, appointed under the twelfth article of the treaty, for the purposes therein specified, who made a report allowing $21,000 for three years' service of three gentlemen of high professional standing. Against this report the memorialists protested; but it was finally agreed that this sum should be received as an advance, the commissioners expressly reserving to themselves the right to review the case and do what justice might require.

Subsequent commissioners were appointed, who disagreed in opinion upon the claim; and ultimately, on the suggestion of the Secretary of War, the commissioners referred the account to seven professional gentlemen of Georgia, with power to any three to act, five of whom united in an award, which was laid before the commissioners. In the meantime, the commissioners had diverted a portion of the fund reserved for the payment of these claims to others, leaving only some $8,000 of that fund unexpended, which sum the last board of commissioners, acting under the award, directed to be paid to the memorialists, it being the whole amount of the reserved fund which remained under their control.

The memorialists now claim that the balance of that fund, which was created for *their benefit alone*, and which has been applied by the commissioners of the United States to other purposes, shall be paid to them. The committee think they are entitled to receive it, and, referring for the facts here stated to the accompanying papers, recommend the adoption of the following amendment to the Indian appropriation bill:

"For payment in full of the claims of W. Y. Hansell, W. H. Underwood, and the representatives of Samuel Rockwell, $30,000, being the balance of the sum of $60,000 reserved in the treaty between the United States and the Cherokee nation (negotiated on the 29th of December, 1835) for the payment of the said claims, and misapplied by the commissioners of the United States to the payment of other claims—the said sum to be distributed in the following manner:

"To W. Y. Hansell, $11,146.

"To W. H. Underwood, $9,035.

"To the legal representatives of Samuel Rockwell, $10,144."

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 67.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 15, 1858.—Ordered to be printed.

Mr. SEBASTIAN made the following

REPORT.

[To accompany Bill S. 136.]

The Committee on Indian Affairs, to whom were referred the petition and papers of John B. Hand, of Mississippi, make the following report:

Mr. Hand became the purchaser of certain Indian reservations under the treaty of Dancing Rabbit creek, and paid to the Indians, according to contract, fifty cents per acre for the land so purchased. Afterwards, the President of the United States (General Jackson) directed the patents to be withheld until said Hand should pay an additional sum of seventy-five cents per acre. This Hand agreed to do. In December, 1838, A. A. Kincannon, esq., was appointed an agent by the President to investigate, adjust, and settle the matter in dispute, growing out of the purchase of these reservations. To this agent Hand paid the additional seventy-five cents per acre, and Kincannon reported the payment to the department. He failed, however, to account for the money, and subsequently died insolvent. The department refused to acknowledge the validity of the payment, and required Hand again to pay seventy-five cents per acre for the land, which he did, protesting that it was unjust. The official correspondence exhibits the facts that Kincannon was the agent of the government; that he received the money, a part on the 6th of February, 1840, and the balance on the 22d February, 1841, and that no objection was made to its reception until March, 1843. Then, for the first time, the Secretary of War notified the agent that the currency in which the payment was made had depreciated, and that the government would not receive it. The committee think the last payment was improperly demanded, and report a bill for the relief of the petitioner.

An official letter from the Commissioner of Indian Affairs is appended to this report, as follows:

DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs, February 11, 1858.

SIR: In respect to the claim of the heirs of John B. Hand, deceased, to have refunded to them the sum of one thousand three hundred and

forty dollars, ($1,340,) that being the aggregate amount paid on the 6th of February, 1840, and the 22d of February, 1841, to Colonel Andrew A. Kincannon, commissioner appointed to certify Choctaw contracts for the sale of their reserves under the treaty of 1830, and which money was never paid into this office by Colonel Kincannon, I have the honor, in compliance with your request, to state as follows:

I find, upon examination of the papers in the cases of "Louie," "Kashanohla," and "Nahomastubbee" reserves, under the nineteenth article, and "Hop-can-che-hubbee," under the supplement to the above mentioned treaty, that Colonel Kincannon acknowledges, in his report and letters, the receipt of the following sums from John B. Hand, the then claimant by purchase from the original grantees, being the amounts necessary, in addition to the sums satisfactorily shown to have been paid, to make up the minimum price of $1 25 per acre, viz:

1. For Louie's reserve, in addition to the $240 dollars proved to have been paid	$160
2. For Kashanohla's reserve, in addition to the $100 proved to have been paid	100
3. For Nahomastubbee's reserve, in addition to the $80 proved to have been paid	120
4. For Hop-can-che-hubbee's reserve, in addition to the $640 proved to have been paid	960
Total	1,340

This money having been paid in a depreciated currency, the Secretary of War decided, in March, 1843, that, as a condition precedent to the approval of the deeds, the purchasers, or their assignees, should pay into this office, in specie or its equivalent, the several sums above named, as required by Colonel Kincannon under the decision of President Jackson that Choctaw Indian reserves should not be sold below the minimum price of $1 25 per acre.

To enable the purchasers to comply with this requirement, Colonel Kincannon was requested to return the money deposited with him to the depositors; and, on the 10th of March, 1843, he acknowledged the receipt of the letter communicating the Secretary's decision, promising to attend to the matter without unnecessary delay; but notwithstanding this promise, nothing further was ever heard from him on the subject, and it is now understood that he died several years ago entirely insolvent.

The heirs of John B. Hand, therefore, in compliance with the requirements of the department, paid the money into this office, through their attorney, John J. McRae, esq., and the deeds were approved by the President on the 1st of March, 1845, as follows:

The sale of the NE and NW¼ of section 17, 3, 15 east, being the land reserved to Louie, to James B. Trotter.

The sale of Kashanohla's reserve (the SE¼ of section 6, 3, 15 east,) to Joseph B. Earle and ——Thompson; and

The sale of Nahomastubbee's reserve (the SW¼ of section 8, 3, 15 east,) to Joseph Kemp—the patents, in each case, to issue in the name

or names of the original purchasers, in trust for the legal representatives of John B. Hand, deceased.

The sale of Hop-can-che-hubbee's reserve, which was located on sections 17 and 18, and lots 1 and 2 of section 20, in township 3, of range 15 east, to Joseph B. Earle, was also approved on the same day, with the proviso that the patent should issue to Earle in trust for the use of the legal representatives of John B. Hand and Colonel Alexander Trotter, according to their respective legal rights under conveyances from Earle.

The petition of James M. Hand, and the accompanying papers, are herewith returned.

Very respectfully, your obedient servant,

CHARLES E. MIX,
Acting Commissioner.

Hon. A. G. BROWN,
Committee on Indian Affairs, U. S. Senate.

35TH CONGRESS, 1st Session. } { REP. COM. No. 68.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 15, 1858.—Ordered to be printed.

Mr. SIMMONS made the following

REPORT.

[To accompany Bill S. 137.]

The Committee of Claims, to whom was referred the petition of William Nason and others, legal representatives of John Lord, deceased, report:

This claim is founded upon the allegation that John Lord served his country, during the war of the revolution, as a seaman on board the United States ship-of-war "Ranger," from April or May, 1779, to May, 1780, when she was taken at the surrender of Charleston, and that he was detained on board a guard-ship some time afterwards, and finally liberated about the last of July—making in all fifteen months. James Gooch deposes that he was purser and clerk of said vessel during the time mentioned; thinks Lord was aboard; that no pay-roll was made out, and no payments made to the men.

Joseph Wardwell, a shipmate of Mr. Lord, also testifies to the truth of the facts alleged.

In the original petition of Mr. Lord for the payment of this claim, which was presented to the 20th Congress, he assigns as the reasons why his claim was not sooner urged, that at the time of his discharge he did not know that any provision had been made by government for paying off the seamen; nor until 1798, when, on his return from a foreign voyage, he was informed by Captain Wardwell, (whose affidavit is in the case,) that he and other rangers had been paid. He then applied to an agent to assist him in procuring his pay, but without success, and that it still remains unpaid.

It appears from statements that there are no records of the "Ranger" in either the Treasury, War, or Navy Departments.

The case has been twice favorably reported in the House of Representatives, and once a bill passed for its payment; but it being near the close of the Congress, the bill does not appear to have received any action in the Senate. No adverse report upon it appears to have ever been made.

The committee are of opinion that the evidence before them sustains the claim, and they report a bill for the payment of the amount of

wages due, with interest thereon from the time that proof of the service rendered was produced and the claim was made upon the government for payment of what was then due.

35TH CONGRESS, 1st Session. } { REP. COM. No. 69.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1858.—Ordered to be printed.

Mr. CLAY submitted the following

REPORT.

The Committee to whom was referred the petition of Jane Baker, widow of Thomas Baker, deceased, report:

That this petition is for the pension which was granted to her late husband for naval services in the revolutionary war. This petition was first presented to Congress on the 13th of December, 1820, at which period the petitioner is said to have been an aged person. A period of nearly forty years has elapsed since the said petition was first presented, and as no other papers accompany the memorial, nor any evidence is adduced showing the propriety of the case, your committee report adversely to the memorialist.

If, however, the facts asserted in the petition were proven, the petitioner does not come within any class of pensioners, because her husband did not die in the service of the United States. The committee therefore recommend the adoption of the following resolution:

Resolved, That the prayer of the memorialist be not granted.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 70.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1858.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Bill S. 140.]

The Committee on Foreign Relations, to whom was referred the memorial of George W. Lippett, United States consul at Vienna, praying compensation for diplomatic services alleged to have been rendered by him, have had the same under consideration, and now report:

That after a due examination of the merits of this claim, and a careful review of report No. 373, made upon it by this committee on the 26th of July, 1854, accompanied by bill 475, the committee entirely concurring in the views and conclusion therein presented, hereby reaffirm and adopt the same, as follows:

The Committee on Foreign Relations, to whom was referred the memorial of George W. Lippett, United States consul at Vienna, praying compensation for diplomatic services alleged to have been rendered by him, have had the same under consideration, and now report:

It appears from a letter of the Secretary of State, dated July 17, 1854, in answer to inquiries made by the committee, that from the 13th October, 1852, on the return to the United States of Mr. McCurdy, our chargé d' affaires at Vienna, to the 10th December following, when Mr. Foote, his successor, was presented, the archives of the legation were left in the hands of the memorialist; and that, from the recall of Mr. Foote, on the 21st May, 1853, till the arrival of his successor, Mr. Jackson, on the 13th of September of the same year, the memorialist was again left in charge of the legation; and the Secretary adds: "The services he rendered are regarded as useful and necessary; and, although he was not charged with any special diplomatic duties, he had occasion, during the intervals in which he had charge of the property of the legation, to correspond with the minister of foreign affairs on official matters; and the position in which he was placed exposed him, it is presumed, to expenses such as would not have been

incurred under other circumstances, and such as Congress has on several occasions seen fit to reimburse."

The committee regard this case as resting on the same basis of others in which compensation has been allowed, and therefore report a bill for the relief of the memorialist, and recommend its passage.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 71.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1858.—Ordered to be printed.

Mr. POLK made the following

REPORT.

[To accompany Bill S. 144.]

The Committee on Foreign Relations, to whom was referred the memorial of Commodore Charles G. Ridgely, praying remuneration for various necessary expenditures incurred by him, as commanding officer of the naval forces of the United States on the South American station, in 1820–'21, *have had the same under consideration, and now report:*

That on the 17th of January, 1837, Mr. Howard, from the Committee on Foreign Affairs of the House of Representatives, to whom this memorial had been referred, made a report thereon, setting forth concisely the facts of the case, and the reasons which induced them to recommend the granting of the relief asked for, together with a bill for that purpose. Upon a review of that report, and its comparison with the papers accompanying the memorial, this committee are satisfied that the merits of the case are properly set forth therein. They therefore adopt it as their report, and recommend the passage of the bill herewith reported.

IN THE HOUSE OF REPRESENTATIVES, *February* 9, 1848.

The Committee on Foreign Affairs, to whom was referred the memorial of Commodore Charles G. Ridgely, praying remuneration for various expenditures incurred by him in 1820–'21, *respectfully report:*

That they have examined the case, and are of the opinion that the memorialist is entitled to relief for the reasons stated in a report made by Mr. Howard, from the Committee on Foreign Affairs, to the House of Representatives, at the 1st session of the 25th Congress, to which report the committee would respectfully refer the House. The committee have prepared a bill for the relief of the memorialist, which they are of the opinion should pass.

HOUSE OF REPRESENTATIVES, *January* 17, 1837.

Mr. HOWARD, from the Committee on Foreign Affairs, made the following report:

That, during the years 1820 and 1821, whilst Captain Ridgely was in command of the American squadron in the Pacific ocean, and when war was raging in Peru and Chili, the Spanish viceroy, having been deposed, sought a temporary refuge, with his suite and attendants, on board of the United States frigate Constellation, under the command of Captain Ridgely; that he incurred considerable expenses in entertaining these guests; that, on other occasions, he received distinguished Spaniards on board of his squadron, owing to the prevailing unsettled state of things; and that, whilst he was affording them a protection, dictated by humanity, and warranted by his instructions from the Navy Department, incurred extraordinary expenses in entertaining them; and that he also performed other services, during his cruise, not falling within the ordinary duties of the commander of a squadron, but demanded by the unsettled condition of public affairs, and the consequent necessity of protecting the substantial interests of his country.

Upon referring to the Navy Department for a knowledge of the instructions under which Captain Ridgely sailed, for the purpose of ascertaining whether his conduct was justified by them, the committee find that a large discretionary power was given (as ought to have been given) to the commanding officer, upon such a distant and delicate duty. The Secretary of the Navy directed him, among other things, as follows: "In touching at the ports of Chili and Peru, and all others in South America, you will ascertain whether the trading or whale ships of the United States are molested in the prosecution of their voyages, and the causes of such molestation, and afford to them all particular relief, in cases of need; and, at all the ports you may visit, make such display of the ship under your command as shall be best calculated to produce impressions favorable to the interests of the United States." "You will visit all the United States ships and vessels you may meet, with a view to ascertain their situation, and whether they have been interrupted in their lawful pursuits; afford them aid, protection, and security, consistently with the laws of nations and the respect due to the existing authorities, wherever and whenever such protection and aid shall be needed and can be afforded."

The two following examples are selected amongst the services performed by Captain Ridgely under these general instructions, which appear to the committee to fall legitimately within their scope. In 1821 a revolution took place at Lima, in Peru, and that city fell into the hands of General San Martin. Immediately preceding the fall of the city, the Viceroy of Spain, General Pezuela, an old gentleman of seventy years of age, and who had been Viceroy of Peru for twelve years, was deposed, and made his escape on board an American merchant ship, called the General Brown. He was accompa-

nied by his son-in-law, a colonel in the service of the King of Spain, and by his confessor. In a day or two after this event, the frigate Constellation arrived, and Captain Ridgely found a determination existing, on the part of the commander of the fleet of Chili, to capture the General Brown, with the intention of sacrificing the life of this venerable Viceroy, and listened, from humanity and policy, to the appeal for protection on board of his ship for the governor who had, for so many years, presided over the country, and who might, perhaps, be soon called upon to resume his power. All the other ports of Peru were at that time under the government of Spain, and prudence, therefore, required that a kind feeling towards the American flag should be maintained in those ports. These persons were received on board of the frigate by Captain Ridgely as his guests, and entertained at his expense, until an opportunity was afforded of placing them in safety.

Upon another occasion, Mr. Prevost, then at Lima, exhibited to Captain Ridgely a letter which he had received from the master of a large merchant ship, belonging to New York, with a very valuable cargo on board, stating that his vessel was taken possession of by the authorities of Guayaquil, and calling for assistance from the civil and military powers of his country. The revolution of Guayaquil at that moment, and the absence of all regular government, required a speedy and effectual interposition. Although Mr. Prevost was not, perhaps, strictly accredited, according to diplomatic etiquette, to the authorities of Guayaquil, yet he was known to be an agent of the American government, and Captain Ridgely promptly repaired with him to the relief of their countryman in distress. The union of civil and military interference was too influential to be resisted, and the vessel was released; but the expenses of maintaining Mr. Prevost fell, of course, upon Captain Ridgely, and are properly chargeable to the United States.

These two cases will serve to illustrate the general character of the services rendered by Captain Ridgely, under his instructions, and it is unnecessary to enumerate more. The price of provisions is represented to have been enormous. Captain Clack certifies that, at the time when the Viceroy was received on board, flour was selling for one hundred dollars per barrel, and other articles proportionably high. Although no precise data exist in the case, from which to compute exactly the expense sustained by the commodore, the committee have endeavored to ascertain it, and believe that six thousand dollars would not be more than a fair allowance.

They, therefore, report a bill for that amount.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 72.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 145.]

The Committee on Military Affairs and the Militia, to whom was referred the petition of Brevet Major James L. Donaldson, assistant quartermaster of the United States army, having had the same under consideration, report:

The petitioner was acting assistant quartermaster at Walnut Springs, before the city of Monterey, Mexico, after the city was taken by the American army, (in the month of September, 1846,) and as such had in his possession public funds to the amount of $400, which he kept in a box or chest in his tent, this being the only means he had of keeping it. On the 10th of October, 1846, he had occasion to go to Monterey with Captain Webster, the officer in command, on official business, and left his tent in charge of a sentinel; during his absence his tent was entered in the rear and the money stolen, and although the most diligent search was immediately made, the funds have not been found, though the box was afterwards discovered in the neighboring bushes rifled of the money. Lieut. Bowen, who occupied the same tent, corroborates the statement of the petitioner as to the circumstances of the robbery, and gives it as his opinion that the amount lost was $400. The testimony of the commanding officer and of the non-commissioned officers and privates all support Major Donaldson's statement; and the committee, being satisfied that the money was lost without any negligence or fraud on the part of the petitioner, report a bill for his relief.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 73.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 148.]

The Committee of Claims, to whom was referred the petition of James Suddard, report:

The petitioner was commissioned as assistant surgeon, United States navy, May 19, 1849, and was entitled, by the act of 1828, (4 Stat., 313,) to an examination for promotion to the grade of passed assistant surgeon May 17, 1854, having been in the navy five years, and seen two years' sea service.

In 1851 he was ordered to the Pacific station, where he was detailed on duty until May, 1855, when he was ordered home. In March, 1856, he passed a satisfactory examination, and received his promotion.

He now asks to be allowed the difference of compensation between an assistant surgeon and a passed assistant surgeon from the 17th of May, 1854, to 9th March, 1856, which he lost in consequence of having been employed on foreign service at the time he was entitled to his examination and promotion.

An act was passed at the last session of Congress for the relief of Surgeon Thomas B. Steele, under precisely similar circumstances.

The committee are of opinion that the petitioner is entitled to the relief asked, and report a bill accordingly.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 74.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 149.]

The Committee of Claims, to whom was referred the petition of George H. Howell, report:

The petitioner was commissioned as assistant surgeon in the navy on the 9th November, 1847, and was entitled to an examination for promotion to passed assistant surgeon on the 9th November, 1852, but he was absent from the United States at the time, on board the United States brig Bainbridge, on the coast of Africa, and did not return until August, 1853. He passed a satisfactory examination in 1854.

Under a decision of the Attorney General, dated July 1, 1853, it is held that he was not entitled to the advanced pay of passed assistant surgeon until after his actual examination. The effect of this decision is, as justly remarked by the Attorney General, to deprive the meritorious officer, who is actually engaged in foreign service, of the emoluments which he would have received if he had been enjoying the comforts of home.

This claim is for the difference of pay from January 28, 1853, when it would have commenced, if he had been at home, to April 7, 1854, when it actually commenced, amounting to $298 61.

The committee are of opinion that the claim ought to be allowed, and report a bill accordingly.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 75.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1858.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 153.]

The Committee on Naval Affairs, to whom was referred the petition of Joshua D. Todd, United States navy, asking to be allowed the difference of compensation between the grade of a passed midshipman and master for the time he acted as master, under the direction of the Secretary of the Navy, have had the same under consideration, and report:

The petitioner asks to be allowed increased compensation for services rendered by him, he having, while a passed midshipman of the United States navy, performed the duties of a master, under directions from the Secretary of the Navy, from 17th June, 1844, to 10th of August, 1846. Many cases of an analogous character have been referred to your committee, and in their consideration they have adopted, as their general rule of action, the policy of refusing to grant to the officers of the navy any higher compensation than that allowed to them by law. There are, however, in the case of the petitioner, peculiar circumstances which make a deviation from the common rule just and proper. In the third section of the act of 17th June, 1844, all previous provisions of law granting to officers temporarily performing the duties belonging to those of a higher grade the compensation allowed by law to such higher grade were repealed. The general legislation remains unchanged; but, by act of 10th August, 1846, an exception was made in favor of passed midshipmen performing the duties of master under the direction of the Secretary of the Navy. It is to be presumed that this exception was established in consequence of the peculiarly responsible duties of masters as navigators of our ships-of-war. The service of Mr. Todd was performed in the interval between the enactment of the general repealing law and the establishment of the special exception in favor of passed midshipmen acting as masters. This fact, in the opinion of the committee, takes the case of Mr. Todd out of the ordinary principle which has governed them in refusing to recommend allowances for increased pay, and they accordingly report a bill for *his relief.*

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 76.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1858.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 154.]

The Committee on Naval Affairs, to whom was referred the memorial of Dr. William F. Carrington, passed assistant surgeon United States navy, praying to be allowed compensation as such while he acted in that capacity prior to his examination, have had the same under consideration, and report:

The petitioner was commissioned as assistant surgeon in June, 1848. Under the act approved May 24, 1828, an assistant surgeon who has been in service five years, and has seen two years' service on board a public vessel of the United States at sea, is entitled to be examined, and, if found qualified, to be passed for promotion with increased pay. The petitioner, on the 17th day of June, 1853, had been in service five years, and had seen two years' service in a man-of-war at sea prior to June, 1852, when he was ordered by the Navy Department to the United States sloop-of-war St. Louis, Captain Ingraham, bound on distant and lengthened service, and was thus deprived of his examination in 1853. Under this order he was in service on distant seas, and prevented from obtaining his examination until the spring of 1856, when he passed, and received his warrant as passed assistant surgeon, bearing date in 1853, the time at which he was entitled to his examination under the law of 1828. The department decided that the petitioner could only be paid as a passed assistant surgeon from the date at which he was examined and passed.

The committee are of opinion that, as the memorialist was entitled to his examination in 1853, when, if he had been examined and passed, he would have received increased pay, and being deprived of his examination and consequent increase of pay at that time by the order of the Navy Department sending him on distant service, it is but just he should receive the pay of his rank from the date of his warrant, and accordingly report a bill for his relief.

The case of Dr. Thomas B. Steele, passed assistant surgeon United States navy, for whose relief the act approved March 2, 1857, was passed, is precisely the same in character as that of your memorialist.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 77.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1858.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 155.]

The Committee on Naval Affairs, to whom was referred the petition of Robert Carter, passed assistant surgeon United States navy, praying the difference of pay between assistant surgeon and passed assistant surgeon from the time at which he was entitled to his examination to the time at which he was actually examined, have had the same under consideration, and report:

This case does not differ from that of William F. Carrington, (reported on this day,) and for the reasons therein stated your committee report a bill for the relief of the petitioner, and recommend its passage.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 78.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1858.—Ordered to be printed.

Mr. POLK made the following

REPORT.

[To accompany Bill S. 156.]

The Committee on Claims, to whom was referred the memorial of Joshua Shaw, report:

This claim is based upon the use, by the government of the United States, of the memorialist's invention of the copper percussion caps and locks for small arms, and percussion locks and wafer primers for cannon. The facts of the invention by Mr. Shaw, of its great utility and of its extensive use by the government, have been fully admitted by the Ordnance department. In 1847 Congress passed an act (9 Stat., 684,) authorizing theSecretary of War to examine the claim of Mr. Shaw, and directing its payment, to an amount not exceeding $25,000.

Under this act $18,000 was allowed and paid; and the present application is for the payment of the remaining $7,000.

In the report accompanying the above act the committee say: "The experiments made by Mr. Shaw, at the instance of the government, fully realized the high expectations of the inventor, and established, to the complete satisfaction of the government, the utility of his inventions," (Report H. R. No. 53, 2d session, 28th Congress.) And the head of the Ordnance office says: "It is, therefore, due to Mr. Shaw to state that this office decidedly recognizes him as having a just claim on the government for the use of his inventions."

It has been the practice of the government to make liberal compensation to inventors for the use of their inventions, when they have proved to be important to the public service and defence. Ten thousand dollars was paid for the right to use Bishop's portable derrick, (9 Stat., 375;) fifteen thousand dollars for the use of a machine for making percussion caps, (Priv. Stat. of 1854, p. 375;) seventy-six thousand two hundred dollars to R. Fulton's heirs "for the great benefit conferred on the country by his inventions in the application of steam navigation, &c.," (9 Stat., 66;) besides many other instances.

In a letter dated January 12, 1855, Colonel Craig, the head of the Ordnance office, says: "It is my opinion that the whole amount mentioned in the act of February 20, 1846—viz: twenty-five thousand

dollars—is not, when compared with gratuities for other improvements in military weapons, two great a compensation to Joshua Shaw for the past and future use of his invention."

In view of all the facts, the committee fully concur in the above opinion of Colonel Craig, and report a bill for the payment of the seven thousand dollars now claimed.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 79.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1858.—Ordered to be printed.

Mr. BROWN submitted the following

REPORT.

The Committee on the District of Columbia, to whom was referred the memorial of the National Institution for the promotion of science at Washington city, refer to the subjoined correspondence between the Secretary of the Interior and the Attorney General, and conclude therefrom that the government has taken possession of the collections mentioned by the memorialists as in their keeping. It is very clear that these memorialists are under no sort of liability to this government on account of these collections, since the government has taken formal possession of its own property, and it is just as clear that government ought not to interfere as between memorialists and private parties to whom they may be liable. No further legislation seems to be necessary, and your committee ask to be discharged from the further consideration of the subject.

DEPARTMENT OF THE INTERIOR,
January 30, 1858.

SIR: In compliance with your verbal request of this morning, I have the honor to enclose, herewith, a copy of a letter addressed by me, on the 19th of May last, to the Attorney General, together with a copy of his reply thereto, dated June 10, in reference to the collections of the several exploring expeditions in the Patent Office building.

Very respectfully, your obedient servant,

J. THOMPSON,
Secretary.

Hon. A. G. BROWN,
United States Senate.

DEPARTMENT OF THE INTERIOR,
May 19, 1857.

SIR: I have the honor to ask your opinion as to the true construction to be placed upon an act, passed at the last session of Congress,

for a transfer of the collections of the exploring expedition, "and the permanent arrangement of the cases" therefor, as found on page 219 pamphlet laws. By act of 26th August, 1842, (Stat. at Large, vol. 5, p. 534,) it was directed "that until other provision be made by law for the safe keeping and arrangement of such objects of natural history as may be in the possession of the government, the same shall be deposited and arranged in the upper room of the Patent Office, under the care of such persons as may be appointed by the Joint Committee on the Library."

This would seem to have been intended as a temporary arrangement, and nothing more.

The sixth section of the act of 10th August, 1846, "to establish the Smithsonian Institution," provided "that in proportion as suitable arrangements can be made for their reception, all objects of art, and of foreign and curious research, and all objects of natural history, plants, and geological, and mineralogical specimens belonging, or hereafter to belong, to the United States, which may be in the city of Washington, in whosever custody the same may be, shall be delivered to such persons as may be authorized by the Board of Regents to receive them; and shall be arranged in such order, and so classed as best to facilitate the examination and study of them, in the building * * * to be erected for the Institution."

And this would appear to have looked to a permanent arrangement.

The act of 3d March last (first herein referred to) is found in an appropriation bill, and in the following terms:

"For the construction and erection of suitable cases to receive the collections of the United States Exploring Expedition, and others in geology and mineralogy, belonging to the United States, now in the Patent Office, and elsewhere in Washington, fifteen thousand dollars."

"For the expense of the transfer of these collections, and the permanent arrangement of these cases, two thousand dollars."

Were there no intermediate act I should have no difficulty in understanding the one last named, but should, without hesitation, conclude that Congress intended the "transfer" of the collections to be made to the buildings of the Smithsonian Institution, and the permanent arrangement of the same therein, as was contemplated by the act of 1846.

Such, however, is not the case, for the eighth section of the act of August, 1854, (Stat. at Large, vol. 10, p. 572,) directs "that the collections of the exploring expedition, now in the Patent Office, be placed under the care and management of the Commissioner of Patents, who is hereby authorized to employ one principal keeper of said collections, at an annual salary of nine hundred dollars," &c.

And the question now arises whether this act is to be regarded as repealing that of 1846, or merely as transferring the collections from the custody of the "Joint Committee of the Library," in which they were placed by the act of 1842, to that of the Commissioner of Patents, until accommodations should be provided for them in the Smithsonian Institution.

Under these circumstances I have respectfully to ask your views upon the subject, and particularly under the following heads:

1. Is the act of 1854 to be regarded as superseding that of 1846, and are the "transfer" and "permanent arrangement," spoken of in the act of 3d March last, to be understood as bringing into the Patent Office building such collections of the kind alluded to in the act as were, at the time of its passage, deposited in the Smithsonian building or elsewhere? &c.

2. Is the act of 1846 still in force; and are the "transfer" and "permanent arrangement" spoken of to be considered as transferring the collections from the Patent Office building to that of the Smithsonion Institution, as contemplated by the sixth section of that act? And if so, will, or will not, the custody of those collections be also transferred to the regents of that institution; and the Commissioner of Patents, therafter, relieved of all the responsibility in the premises?

In conclusion, I will take the liberty to add, that the Commissioner of Patents, in his report dated 2d January, 1854, and my predecessor, in his annual report for 1855, advised the removal of the collections from the Patent Office building; and Professor Henry and Judge Mason both informed me that the appropriations of the 3d March last, hereinbefore referred to, were made upon their joint application to Congress, having that object in view.

To facilitate your examination of the case, I enclose a letter, dated the 2d ultimo, from Professor Henry, and extract from the Patent Office report, and a printed copy of the report of my predecessor for 1855, alluded to above.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

ATTORNEY-GENERAL OF THE UNITED STATES.

ATTORNEY GENERAL'S OFFICE,
June 10, 1857.

SIR: The act of 26th August, 1842, (5 Stat. at Large, 534,) commands the objects of natural history belonging to the government to be kept and arranged in the Patent Office "until other provisions be made by law for their safe keeping and arrangement."

Other provision *was* made by law on the 10th of August, 1846. By an act of Congress approved on that day, (9 Stat. at Large, 105,) it was directed they should go to the building of the "Smithsonian Institution" as soon as suitable arrangements could be made to receive them.

Next, in chronological order, we have the act of 4th August, 1854, (10 Stat. at Large, 572,) which puts the collections of the exploring expedition, at that time in the Patent Office, under the care and management of the Commissioner, and authorizes him to appoint a principal keeper of them, at an annual salary of nine hundred dollars.

Lastly comes an appropriation on the 3d of March last, of fifteen thousand dollars, for suitable cases to receive these collections, and two thousand dollars for the transfer and permanent arrangement of

them, without saying where the cases shall be put up, or in whose custody the collections shall remain.

One thing is extremely clear. The appropriation is to be expended in erecting cases at the building of the Smithsonian Institution, if that be the place where the law requires the collections to be kept. There is no pretence for saying they are to be kept elsewhere, if the act of 1846 be still in force. That act is in force unless it was repealed by the act of 1854. The latter act does not expressly repeal the former. Is it a constructive or implied repeal?

In answering this question, it must be carefully recollected that implied repeals are never to be favored. It is so easy for the legislature, in making one law, to say that another law on the same subject is repealed, and when it is meant it is so likely to be said that we never presume it when it is not said, unless the two laws are in such palpable conflict that both cannot be executed. Where different statutes give to different persons privileges or powers which cannot subsist together, the latter grant must, of necessity, be construed as a withdrawal of the earlier one. But, in order to justify such a construction, it must appear to be a case of flat repugnancy or irreconcilable inconsistency. For a further exposition of this rule, and of the authorities which support it, I refer you to the case of *Brown* vs. *the Commissioners of Philadelphia county*, decided by the supreme court of Pennsylvania, and reported in 9 Harris, 37.

To me it seems easy enough to reconcile these two laws and make them stand together very well. The one was a permanent arrangement which was not to take effect for some years, the other was a temporary disposal of the same subject in the meantime. Regarding them in this light, they can both be executed.

I believe, therefore, that "all objects of art, and of foreign and curious research, and all objects of natural history, plants, and geological and mineral specimens" which belong to the United States, and which are anywhere in the city of Washington, including those collected by the exploring expedition, should go to the building of the Smithsonian Institution as soon as suitable arrangements can be made for their reception; and that the appropriation for cases to receive them, as well as that for the transfer and permanent arrangement of them, should be expended in such manner as will best carry out the true meaning and intent of Congress in passing the act of 1846.

I am, very respectfully, yours, &c.,

J. S. BLACK.

Hon. J. THOMPSON,
Secretary of the Interior.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 80.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1858.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 159.)

The Committee on Naval Affairs, to whom was referred the petition of Thomas J. Page, commander United States navy, praying that he may be credited with the amount of losses sustained by and charged against him in the settlement of his accounts as acting purser, while in command of the expedition for the "exploration and survey of 'La Plata' and its tributaries," have had the same under consideration, and report:

The petitioner, a lieutenant in the United States navy, under the order of the Secretary of the Navy, took command of the steamer Water Witch during her late cruise of three years and five months, in the "exploration and survey of the river 'La Plata' and its tributaries."

In addition to the duties of commander of the ship, he was ordered to perform those of purser, though he expressly requested to be relieved from them, because of his want of familiarity with them, and with accounts generally. He was not even allowed a clerk by the department. The extent of country to be explored, both by land and water, necessarily involved, at various times, not only a separation of portions of the officers and "ship's company" from the vessel, but also made it necessary that the petitioner himself should be absent for periods of from one to six months. It will be perceived that, had he remained on board to attend in person to the duties of purser, he could not have properly discharged, under his instructions, the more important duties of the expedition, and that, in obeying these instructions, he was necessarily compelled to entrust to others not only the command of the vessel, but the discharge of the purser's duties also.

From the diversified character of the duties thus devolved upon him, it necessarily followed that the accounts rendered were very numerous. Notwithstanding this, there is not the expenditure of the smallest amount of money which has not been fully accounted for, nor a bill contracted which has not been recognized as made under the authority of his instructions.

The losses incurred, and for which he is held responsible, arise from payments made to sailors who deserted from the vessel in debt to the government; from errors made by the purser's steward (on whom he was compelled greatly to rely) in the calculation of the sailors' terms of service; from errors in a bill of exchange; from errors made by the steward in the calculations, &c. During the three years and five months the petitioner disbursed $112,000 in money, and about $10,000 in provisions and clothing.

The whole has been faithfully accounted for. The money for which he is held responsible was not spent contrary to law, but through ignorance, in part, of regulations with which he could not have been supposed to be familiar, inasmuch as they did not relate to his duties proper, and he knew nothing of their existence, and, in part, through errors of the stewart, in whom, as above stated, he was necessarily obliged to confide much in the calculation of accounts, &c. The statements of the petitioner are fully sustained by his oath, and also by the certificate of Lieutenant William N. Jeffers, one of the officers on said expedition. The items disallowed amount to $354 46, and, under the circumstances of the case, your committee, satisfied that Commander Page acted faithfully and with his best abilities for the public interest, should have those credits allowed in the adjustment of his accounts, and they report a bill accordingly.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 81.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1858.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 160.]

The Committee on Naval Affairs, to whom was referred the petition of Thomas J. Page, lieutenant (now commander) in the navy, United States, for compensation for services performed as a purser, have had the same under consideration, and report:

This case was referred to the Naval Committee during the 1st session of the 32d Congress; and as the report made therein on the 19th May, 1852, gives a full statement of the petitioner's claim, and of the reasons for rejecting it, with the exception of seventy-five dollars expended in the preparation of his accounts, the committee adopt the said report, and now present it to the consideration of the Senate.

IN THE SENATE OF THE UNITED STATES, *April* 1, 1852.

Mr. MALLORY made the following report:

The Committee on Naval Affairs, to whom was referred the memorial of Lieutenant Thomas J. Page, of the United States navy, asking to be allowed the pay of a purser for the time during which he commanded the United States brig Dolphin, and performed purser's duties on board said vessel, has had the same under consideration, and thereupon submit the following report:

The memorialist alleges that "in October, 1849, while on the East India station, he was appointed to the command of the brig Dalphin, and with the command was united the appointment also of purser." He then proceeds to state that he performed the duties of purser on board said vessel, and adjusted his accounts with the government as an acting purser; and he submits an account of the time so employed, and for which he claims compensation at the rate of $1,500 per annum, making the sum of $3,037 92. He does not claim to have been a

purser, or to have received any appointment as *purser* or as an acting purser, but that he was appointed to command the brig, and that "with the command was united the appointment also of purser."

Your committee has given to the memorialist's claim very careful examination, with the view of affording him the relief he seeks, if it can be granted consistently with the existing laws and usages of the navy on the subject; and your committee is aware that many other officers of this branch of the public service have occupied similar positions, and performed similar services, and that their claims also are involved in its action.

The records of the Navy Department show that for a very long period it has been the practice of the Secretary of the Navy to direct the commanders of brigs and other smaller vessels to perform purser's duties, in addition to those of commander. The duties of supervising the financial concerns of the vessels generally have long been, and still are, considered incident to the command of such vessels, when the exigencies of the public service do not admit of their having a regular purser. Before the year 1835 officers commanding and thus performing purser's duties were permitted to purchase their own "slops," &c., and to charge a profit upon the articles furnished to their crews; but the act of March 3, 1835, (see Stat. at Large, vol iv, page 757,) precluded officers of the navy from receiving *any* incidental allowances, except for travelling expenses, and for the performance of the duties of a superior grade. In lieu of incidental allowances their pay proper was greatly augmented. As an example, the aggregate pay and subsistence of a lieutenant on sea service was raised from $965 to $1,573, and that of a lieutenant commanding (the case of the memorialist) from $1,176 to $1,873; and it was considered that this increase of pay would compensate for such "*extra*" services as had previously been separately charged for.

Your committee is not aware that any lieutenant commanding has ever received any extra allowance for attending to the duties of purser on board of his vessel; and when the memorialist took command of the Dolphin both the law and the practice of the department under it were in operation.

But in addition to the act just cited, the army appropriation act of August 23, 1842, directing that—

"No officer of any branch of the public service shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or any other service or duty whatsoever, unless the same shall be authorized by law, and the appropriation therefor explicitly set forth that it is for such additional pay, extra allowance, or compensation."

The twelfth section of the act of 26th August, 1842, is in these words:

"No allowance or compensation shall be made to any clerk or other officer by reason of the discharge of duties which belong to any other clerk or officer in the same or any other department, and no allowance shall be made for any extra services whatever which any clerk or other officer may be required to perform."

The third section of the act of 3d March, 1839, is in these words:

"No officer in any branch of the public service, or any other person whose salaries or whose pay or emoluments is or are fixed by law and regulations, shall receive any extra allowance or compensation, in any form whatever, for the disbursement of public money, or the performance of any service, unless the said extra allowance or compensation be authorized by law."—(*U. S. Stat. at Large, vol. 5, page* 349.)

The act of 30th September, 1850, (U. S. Stat. at Large, vol. —, pages 542–3,) declares that "hereafter the proper accounting officers of the treasury, or other pay officers of the United States, shall in no case allow any pay to one individual the salaries of two different offices on account of having performed the duties thereof at the same time. But this prohibition shall not extend to the superintendents of the executive buildings."

The design of the legitimate construction of these acts cannot admit of a doubt.

But the memorialist claims that he held two distinct offices, and exercised the duties of both, and is entitled to receive the pay of both; and he submits an extract from a decision of Chief Justice Taney, delivered in the case of "The United States *vs.* Joseph White," in the circuit court, Maryland district, 1851, and also extracts from an opinion of Attorney General Crittenden, June 7, 1851, in support of his claim.

It is evident to your committee that the memorialist did not hold two distinct offices. The duties of a purser on board of small vessels like the Dolphin were incident to those of commander, and compensation, in lieu of a distinct and separate allowance for them, had previously been made by law. That such incidental services afford no foundation for a claim for extra compensation was evidently the opinion of the chief justice in the case cited. He says:

"A navy agent, therefore," (and the principle is equally applicable to any other officer,) "is not entitled to compensation beyond his salary as fixed by law for any extra services, although such services may be out of the district for which he is appointed, and may more properly appertain to the duties of another navy agent, or *even to an officer of the government filling an office of a different character.* His salary is the only compensation for services required of him and performed by him if he holds no other office or appointment."

The memorialist was not a purser; he pretends no appointment as purser; the duties of purser were incident to the command of the Dolphin; and they were discharged by "*an officer of the government filling an office of a different character.*"

The memorialist is not entitled, in the judgment of your committee, to the relief he claims. He alleges that, in the preparation of his accounts, in the various forms required by the practice of the accounting officers of the treasury, he expended about seventy-five dollars. A reasonable allowance should be made for this expenditure. A naval officer cannot be presumed to be conversant with the accurate details so necessary in the preparation and adjustment of long standing accounts, beyond the sphere of his ordinary and legitimate duties; and your committee report a bill for the relief of the memorialist to this extent.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM No. 82.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1858.—Ordered to be printed.

Mr. GREEN made the following

REPORT.

[To accompany Bill S. 161.]

The Committee on Territories, to whom was referred the message of the President, communicating a constitution for Kansas as a State, adopted by the convention which met at Lecompton, on Monday, the 4th of September, 1857, *having had the same under consideration, instruct me to report:*

By the treaty with France, made on the 30th day of April, 1803, known as the Louisiana treaty, Kansas was acquired, with a special stipulation for the protection of the rights of the inhabitants, and for the admission of such States as might be formed out of that territory into the Union on an equal footing with the original States. This solemn treaty obligation has been heretofore faithfully observed, and the States of Louisiana, Missouri, Arkansas, and Iowa have been respectively admitted into the Union; and another part of the territory acquired under that treaty, included in the proposed State of Minnesota, is now about to be likewise admitted. Kansas has the same right to expect the same treatment in the fulfillment of sacred treaty obligations, made with one of the first powers of the world.

In view of these obligations, and in strict conformity with the uniform practice of the government in fulfillment thereof, citizens of the United States have settled in Kansas, under the just expectation of having a State organization. And to protect the people and enable them to prepare for such an organization, Congress, on the 30th day of May, 1854, passed an act creating a government for that Territory.

That act, following up the constant practice of the government and in fulfillment of the treaty with France, contemplates a change of its form into that of a State, and for admission into the Union.

Under the act of Congress aforesaid, a regular territorial government was organized, and the people of the Territory were thereby constituted a political community, with full powers of government, subordinate only to the Constitution of the United States, and proceeded to pass laws for the protection of persons and property, the validity of which cannot now be called in question.

Soon after the territorial government went into operation, a party of disaffected persons formed combinations to resist the laws and to set at defiance both the territorial and United States governments.

To that end they proceeded to form an organization, and, although the population at that time amounted to less than twenty-five thousand inhabitants in the entire Territory, and *they*, constituting a small minority of that number, yet, in order to resist the legal authorities under the color of law, got up an illegal assembly at Topeka, and actually pretended to organize a State government; and this, too, without a congressional enabling act; without the assent of the territorial legislature; without a vote of the people authorizing the election of a convention; but in disregard of all. That same party has been persistent in its illegal efforts to maintain its own organization in violation of law, and to defeat and prevent the operation of all laws and the settlement of all questions affecting the peace of Kansas. To accomplish its ends they concocted and affected a secret military organization of their malcontents, pledged to resist the legal authorities and actually received Sharpe's rifles and other arms and munitions of war, which were sent out from Massachusetts and other States by the so-called emigrant aid societies, to enable them to maintain their forcible resistance to lawful authority. The societies had previously sent out the worst part of the spurious population of Kansas for the professed and avowed object of excluding slavery from the Territory. That attempt was justly regarded as offensive to the southern States. The people of the United States, through their representatives in Congress, established the principle of strict non-intervention on the subject of slavery in the Territories and States. The Supreme Court subsequently sustained, by a solemn decision, the same principle.

Therefore, for States, or societies chartered by States, or any other combinations, to undertake to effect an object that Congress, the Supreme Court and the American people have pronounced against, must, of necessity, have proved obnoxious.

The action of these societies, in conjunction with their affiliated organizations in the Territory of Kansas, created a general commotion throughout the country, as was to have been expected.

Charges and complaints were made on both sides, and the whole subject was subsequently brought before Congress for consideration. The matter was fully investigated and the regular, legal territorial government was completely sustained and endorsed. Every department of the federal government in which this question has been considered, has pronounced the same judgment in favor of the territorial authorities, and against the party resisting its laws.

A report was made in the Senate on this subject by Mr. Douglas, the chairman of the committee charged with the investigation, in which he says:

"The passage of the Kansas Nebraska act was strenuously resisted by all persons who thought it a less evil to deprive the people of new States and Territories of the right of State equality and self-government than to allow them to decide the slavery question for themselves, as every State of the Union had done, and must retain the undeniable right to do, so

long as Constitution of the United States shall be maintained as the supreme law of the land. Finding opposition to the principles of the act unavailing in the halls of Congress and under the forms of the Constitution, combinations were immediately entered into in some portions of the Union to control the political destinies and form and regulate the domestic institutions of those Territories and future States through the machinery of emigrant aid societies. In order to give consistency and efficiency to the movement, and surround it with the color of legal authority, an act of incorporation was procured from the legislature of the State of Massachusetts, when a powerful corporation, with a capital of five millions of dollars, invested in houses and lands, in merchandize and mills, in cannon and rifles, in powder and lead, in all the implements of art, agriculture, and war, and employing a corresponding number of men, all under the management and control of non-resident directors and stockholders, who are authorized by their charter to vote by proxy to the extent of fifty votes each, enters a distant and sparsely settled Territory with the fixed purpose of wielding all its power to control the domestic institutions and political destinies of the Territory, it becomes a question of fearful import how far the operations of the company are compatible with the rights and liberties of the people. Whatever may be the extent or limit of congressional authority over the Territories, it is clear that no individual *State* has the right to pass any law or authorize any act concerning or affecting the Territories which it might not enact in reference to any other State. It is a well settled principle of constitutional law in this country, that while all the States of the Union are united in one, for certain purposes, yet each State, in respect to everything which affects its domestic policy and internal concerns, stands in the relation of a foreign power to every other State. Hence, no State has a right to pass any law, or do or authorize any act with a view to influence or change the domestic policy of any other State or Territory of the Union, more than it would with reference to France or England, or any other foreign State with which we are at peace. Indeed, every State of this Union is under higher obligations to observe a friendly forbearance and generous comity towards each other member of the Confederacy than the laws of nations can impose on foreign states.

"If our obligations, arising under the law of nations, are so imperative as to make it our duty to enact neutrality laws, and to exert the whole power and authority of the executive branch of the government, including the army and navy, to enforce them in restraining our citizens from interfering with the internal concerns of foreign states, can the obligations of each State and Territory of this Union be less imperative, under the federal Constitution to observe an entire neutrality in respect to the domestic institutions of the several States and Territories?"

These extracts prove the character of the resisting party in Kansas, and illustrate its purposes from the beginning to the present time; while the report also fully sustains the regular, legal government, as before stated. Under these circumstances, and in this condition of affairs, and with these express recognitions, the regular, legal territorial government continued to progress, and the population continued to increase, until it was believed the time had arrived for admission into the Union, in accordance with the provisions of the Louisiana treaty, the uniform practice of government, the provisions of the organic act, and the just expectations of the people. On the — day of July, 1855, the regular legislature of the Territory passed an act to take the sense of the people on the subject of forming a State government, preparatory to admission into the Union. The election was held, and a large majority voted in favor of having a convention to adopt a constitution; indeed, the vote was almost unanimous.

In pursuance of which vote the territorial legislature, on the 19th day

of February, 1857, passed a law for taking the census of the people, for making a registry of the voters, and for the election of delegates to the convention. This law is admitted to have been enacted by lawful authority, and to be regular, fair, and just in its provisions. Mr. Geary, then governor of Kansas, vetoed the bill calling the convention, for the reason that it did not require the constitution, when framed, to be submitted to a vote of the people for adoption or rejection.

The bill, however, was reconsidered in each House and passed by a two-thirds vote over the veto of the governor, and thus became a binding law in the Territory. The legislature, no doubt, considered it a solemn duty to leave the people of the Territory perfectly free, through their own delegates in convention assembled, to form and adopt their own constitution in *their own way;* and hence did not undertake to dictate any single act to be performed by the people's representatives, whose authority on such matters was greater than that of the legislature. If the legislature could direct the convention what they should do on *one* subject, it might, with equal propriety, have given commands on all other subjects. This would have been a flagrant violation of all rules of right and of justice to the people.

At the preceding election the people had directed the legislature to pass a law calling a convention of delegates, to be elected by the people for the purpose of adopting a constitution, and if the legislature had gone beyond the performance of that ministerial act, which the people required, it would have been justly regarded as a violation of the people's rights, and an attempt to coerce the convention, which the people were about to elect to reflect *their* own will. The republican institutions of the United States are all based upon the representative principle. Instead of meeting in person, as did the people of Athens, in large tumultuous assemblies, where no certain decision on anything could be had, and where liberty itself was ultimately lost, the people of the several States of our happy Union have chosen rather to delegate authority to representatives, who should act for, and in the name and behalf of the people, in public political matters, either in making constitutions or in the passage of laws for the regulations and government of society. This principle is observed in all our institutions, State and federal, and thus far in our history has proved faithful and efficient in protecting the rights of the people, and beneficial in avoiding the tumultuary mobs which disgraced the Grecian republics and some of our own larger cities. But whether the representative principle, or the personal association in assemblies, be the better system, it is not for the committee to decide. It is sufficient if either one be adopted and pursued by the people, as in the case of Kansas; and the selection of the representative American system can be no valid objection to the action of the people in that regard. That representative rule and principle has been perfected, in a great degree, under our institutions, and may almost be claimed as an *American* system.

That the law providing for the convention afforded equal opportunities to all the citizens of Kansas to have a voice on the constitution, in and through the convention, cannot be denied. It provided:

SEC. 1. Sheriffs are required, between the 1st of March and 1st of April, 1857, to make an enumeration; have power to appoint deputies, who shall take oath, &c.

SEC. 2. In case of vacancy in office of sheriff, the probate judge shall perform his duty; and in case of vacancy in both, the governor shall appoint some competent resident to perform said duty.

SEC. 3. Officers, as above, shall file in office of probate judge a complete list of all qualified voters resident in his county or district, on the 1st of April, 1857.

SEC. 4. Copies of said list to be posted in public places.

SEC. 5. Probate judge to continue court from receipt of said returns to 1st of May, for the purpose of correcting them.

SEC. 6. Lists of legal voters, as corrected, to be returned to the governor and secretary, and distributed generally.

SEC. 7. Upon completion of census, apportionment of members to be made by the governor and secretary, according to the registered voters. Number of representatives to be sixty.

SEC 8. Election for members of the constitutional convention shall be held on the third Monday in June, and no one, unless registered, shall vote.

SEC. 9. County commissioners shall appoint the places of voting, judges of elections, &c.

SEC. 10. Judges of election are required to be sworn; also the clerks, and duplicate returns of election shall be made and certified by them.

SEC. 11. Every *bona fide* inhabitant of Kansas, on the third Monday of June, 1857, being a citizen of the United States, and over twenty-one years of age, whose residence in the county where he offers to vote shall have been three months next before said election, shall be entitled to vote.

SEC. 12. Persons authorized to take the census to administer oaths, &c.

SEC. 13 provides for the punishment of unlawful attempts to influence voters.

SEC. 14 provides punishment for illegal voting.

SEC. 15 provides punishment for those who fraudulently hinder a fair expression of the popular vote.

SEC 16. Delegates are required to assemble in convention at the capitol on the first Monday of September next.

SEC 17 provides for an election by the convention of its officers.

SEC. 18 in relation to the salaries of sheriffs and other officers.

SEC. 19 relative to the location of the election districts.

SEC. 20 requires all votes to be *viva voce*.

SEC. 21 gives a tabular form for the returns.

Above bill passed over governor's veto on the 19th of February, 1857.

A registry of the voters was accordingly taken, in pursuance of the act of the territorial legislature, so far as it was possible, under the peculiar state of things then existing, to do so. It appears that a portion of the inhabitants refused to be registered; some gave ficti-

titous names, and others prevented the officers from complying with the law.

Mr. Stanton, then acting governor of Kansas, says, on that subject:

"It is not my purpose to reply to your statement of facts; I cannot do so from any personal knowledge enabling me either to admit or deny them. I may say, however, I have heard statements quite as authentic as your own, and in some instances from members of your own party, (republicans,) to the effect that your political friends have very generally, indeed, almost universally, refused to participate in the pending proceedings for registering the names of the legal voters. In some instances they have given fictitious names, and in numerous others they refused to give any names at all. You cannot deny that your party have heretofore resolved not to take part in the registration, and it appears to me that, without indulging ungenerous suspicions of the integrity of officers, you might well attribute any errors and omissions of the sheriffs to the existence of this well known and controlling fact."

But notwithstanding all these difficulties in making the registry of voters, 9,251 names were legally returned in the following counties and districts, viz: Doniphan, Brown, Nemaha, Atchison, Leavanworth, Jefferson, Calhoun, Marshall, Pottawatomie, Johnson, Douglas, Shawnee, Lykins, Linn, Bourbon, McGee, Dorn, Allen.

In the following counties, Richardson, Davis, Franklin, Weller, Breckenridge, Wise, Madison, Butler, Coffey, Anderson, Woodson Wilson, Godfrey, Greenwood, Hunter, no registry was taken on account of the facts above stated. All of the last named counties together contained but a very small population or vote. It is believed, from the statement made by General Calhoun, now before the committee, that many of these counties did not contain *ten votes*, and all of them together not so many as 1,500. The counties were marked out by a description of boundaries and named; but some of them were without inhabitants, and many of them were attached to adjacent counties for civil and military purposes.

All of them were equally provided for by the law calling the convention, and any omissions that may have occurred resulted from causes not in the control of the majority of the people.

The largest vote ever had in the Territory up to 21st December last is about 12,000. So that it appears from the facts before the committee, notwithstanding the refusal to comply with the law on the part of those opposed to it, only about 3,000, or less, could possibly have been omitted in the registration; and even that omission was the result of their own acts.

One whole month was afterwards allowed under the law, as before stated, for the correction of the lists after due notice to the public, by adding to or striking off names improperly inserted or omitted; to be determined on legal evidence submitted by any parties concerned, before a legal tribunal. In addition to which, it appears that the governor of the Territory made every effort to induce the people to comply with the law calling the convention, and to give full force and effect to all its provisions.

Thus, every opportunity was afforded to *all* the people of Kansas, to register their names, as legal voters, if they possessed the requisite qualifications. After the registration was closed, according to the law, Mr. Stanton, then governor of Kansas, made the apportionment of delegates amongst the several districts. The election was legally held, pursuant to the law. At the time this apportionment was made the governor knew as much concerning the counties and people not registered, in consequence of acts which no law could prevent, as since; and if the facts, as then presented, were fair enough to justify the apportionment, it is now too late to make any complaint against that action. The law allowed but sixty members for the convention, and the governor, with the full knowledge of the registration before him, apportioned the whole number amongst the districts and counties when the registry had been made; leaving it impossible for other counties not included in the registration by their own misconduct, and not attached to registered counties, to have any separate and independent representation in the convention without a palpable violation of the law calling the convention. The people had legally demanded this call of a convention, and the proper tribunal had made provision for it on terms admitted to be fair, just, and equal for *all the people;* and if by refusal to act, or other misconduct, any portion feel aggrieved, they have no just cause of complaint; nor should Congress pay any regard to complaints consequent upon their *non-action.* Speaking of this call of the convention, and of the convention itself, Mr. Stanton said, in an official document, to the people of the territory:

"The government especially recognizes the territorial act which provides for assembling a convention to form a constitution with a view to making application to Congress for admission as a State into the Union. That act is regarded as presenting the only test of the qualification of voters for delegates to the convention, and all preceding repugnant restrictions are thereby repealed. In this light the act must be allowed to have provided for a full and fair expression of the *will of the people through the delegates* who may be chosen to represent them in the constitutional convention. I do not doubt, however, that in order to avoid all *pretexts* for resistance to the peaceful operation of this law the convention *itself* will in some form provide for submitting *the great distracting question* regarding their social institution, which has so long agitated the people of Kansas, to a fair vote of the actual *bona fide* residents of the Territory, with every possible security against fraud and violence. If the constitution be thus framed, and the *question of difference be thus submitted* to the decision of the people, I believe that Kansas will be admitted by Congress, without delay, as one of the sovereign States of the American Union, and the territorial authorities will be immediately withdrawn."

This was the legal notification of the governor to the people of Kansas BEFORE the election for delegates to the convention was had. Governor Walker, on the 27th May, still *before* the election, and with full knowledge of the registration and apportionment, said—

"Under our practice the preliminary act of framing a State constitution is uniformly performed through the instrumentality of a convention of delegates chosen by the people themselves. That convention is now about to be elected by you on the call of the territorial legislature, created and still recognized by Congress, and clothed by it, in the comprehensive language of the organic law, *with full power* to make such an *enactment.*

"The territorial legislature, then, in assembling this convention, were fully sustained by

the act of Congress; and the authority of the convention is distinctly recognized in my instructions from the President of the United States. * * *

"The people of Kansas, then, are invited by the highest authority known to the Constitution to participate freely and fairly in the election of delegates to form a constitution and State government The law has performed its entire appropriate functions when it extends to the people the right of suffrage, but cannot compel the performance of that duty."

Here, also, by Governor Walker, we have the distinct recognition of the legality of the convention to form the constitution, with a *special* invitation for all qualified to participate therein. But, notwithstanding all this, the same party which had sought to stir up strife and contention previously in the Territory, still continued their insurrectionary and revolutionary movements. Their conduct and their legal relation to the government may be understood from the following quotations made from the official papers of Governor Walker. Speaking of them he says:

"And on the other side in favor of what was regarded by me as open rebellion, even many violent men, headed by the principal delegates of the town of Lawrence, which is the great seat of all the agitation that has disturbed the peace of the Territory." * * *

"Lawrence is the hot-bed of all the abolition movements in this Territory. It is the town established by the abolition societies of the east; and whilst there are respectable people there, it is filled by a considerable number of mercenaries, who are paid by abolition societies to perpetuate and diffuse agitation throughout Kansas, and prevent a peaceful settlement of this question." * * * * * * * * * *

Again he says, 14th July: "I have received authentic intelligence that a dangerous rebellion has occurred in the city of Lawrence, in this Territory, involving an open defiance of the laws, and the establishment of an insurgent government in that city." * * *

He further says: "Under these circumstances, you have proceeded to establish a government for the city of Lawrence in direct *defiance* of the territorial government, and denying its existence and authority. You have imposed upon all those officers the duty of taking an oath to support this so-called State constitution, thus distinctly superseding, so far as n your power, the territorial government created by the Congress of the United States."

"You have caused these proceedings to be printed in handbill form, and have distributed them, as I am informed, throughout the Territory, with a view to incite the other cities, towns, and counties of Kansas to establish insurrectionary governments, thereby placing the people of this territory, so far as in your power, in open conflict with the government of the United States." * * * * * * * * * *

"Your evident purpose is thus to involve the whole Territory in insurrection, and to renew the scenes of bloodshed and civil war Upon you, then, must rest all the guilt and responsibility of this contemplated revolution." * * * "You have, however, chosen to disregard the laws of Congress and of the territorial government, and have proceeded to create a local government of your own, based upon insurrection and revolution. You are inaugurating rebellion and revolution." * * * "If the Lawrence *rebellion* is not put down, similar organizations, extending to counties as well as towns, will be carried into effect throughout the Territory; the object being to *overthrow the territorial government*, and inaugurate the Topeka State government even before the admission of Kansas as a State by Congress."

This party formed a military organization without authority of law, or even the semblance of law, and received their munitions from the abolition societies of the east. The military commander of this illegal organization directed the name of each person to be taken who ref-

to be enrolled on his lists. In speaking of this, Governor Walker says, in his official letter:

"*The professed* object is to protect the polls at the election in August of the new insurgent Topeka State legislature. The object of taking the names of all who refuse enrollment is to terrify the free State conservatives into submission. This is proved by recent atrocities committed on such men by *Topekaites*. The speedy location of large bodies of regular troops here, with two batteries, is necessary; the Lawrence insurgents await the development of this new revolutionary military organization." o o

"You are aware that General Lane commanded the military expedition which made an incursion into this Territory last year, and that the officers of the staff are all leading *agitators* for the overthrow of the territorial government. The object of this last requisition is believed to be to mark for persecution and oppression all those persons, and especially free State democrats, who refuse to unite in this military organization. The purpose is universally regarded to be to establish *a reign of terror*." * * o

"A few weeks since one of these conservative democrats, who had committed no other offence than permitting the use of his name as a candidate for the constitutional convention, was abused and injured in the most shocking manner, and the most *most revolting atrocities were committed upon* HIS WIFE by some of the insurrectionary party." o * o "It will be perceived that this military organization embraces the whole Territory, being arranged into four divisions and eight brigades." o o o "I am well satisfied that a large portion of the insurrectionary party in this Territory do not desire a peaceful settlement of this question, but wish it to remain open, in order to agitate the country for *years to come*." * o * "August 18. The insurgent military organization under General Lane is still progressing *Arms are being supplied* and his troops drilled for action. We are threatened with the seizure of the polls, at various points, by these insurgent forces. When it is remembered that the Topeka party *claim* to outnumber their opponents at least ten to one, the *pretext* for assembling these forces to protect the polls is *evidently* most fallacious."

It thus appears to the committee, from OFFICIAL evidence, that the opposition in Kansas to the Lecompton convention consisted of persons engaged in insurrection, rebellion, and revolution. Some few are known to be citizens of the United States. Whether the others are *citizens* or *aliens*, whether in *allegiance* or *not*, they are all known to be enemies of the government, and openly engaged in attempts against law and order in the Territory, and against the peace and quietude of society. Many have been shown by Governor Walker to be hired *mercenaries* sent out by the abolition societies of the east, and all working in concert to accomplish in Kansas what the Supreme Court, and public sentiment, have decided Congress has no power to do; that is, to prohibit slavery in the Territory of Kansas, and more than that, prevent the people of the Territory from exercising the privilege of deciding that question for themselves in *their own way*.

To do which they have gotten up military organizations of a rebellious character; have committed the most *revolting outrages* against persons and property; threatening to deluge the land in blood; alienating one section of the Union from the other, and endangering the existence of free government.

Such are the characters—such are the objects and dangerous results of the opponents of the Lecompton constitution.

But, without regard to this insurrectionary movement, the regular legal convention of Kansas, in pursuance of law, assembled and adopted the constitution now before the committee, which is thoroughly republican in form. Out of deference to those who might be opposed to African slavery, and to avoid all pretext of complaint on the part of opponents, the convention, accepting the suggestion of Governor Stanton, submitted the question of slavery or no slavery to a direct vote of the *bona fide* inhabitants of the territory. That election was ordered for the 21st December, 1857, when it was accordingly held, and resulted as follows:

Constitution with slavery	6,226 votes.
Constitution without slavery	569 votes.
Making an aggregate of	6,795 votes.

An opportunity has consequently been afforded to the people of Kansas to decide this question of slavery for themselves, and that decision is now before us with all the sanctions of law. No real or valid exception can be taken to any other part of the constitution. On this subject President Buchanan has well said, in his message:

"In fact, the general provisions of our recent State constitutions, after an experience of eighty years, are so similar and so excellent, that it would be difficult to go far wrong at the present day in framing a new constitution."

The constitution conforms precisely to what Governor Walker said would meet his most cordial approval, and that he should devote his whole time in addresses every day to the people of every county in the Territory to insure its adoption. He says:

"Adopt a constitution very similar to that of some of the southern States, securing the right to the slaves now in the Territory, numbering probably from two to three hundred, but prohibiting the introduction of any more, excluding all free negroes, enforcing by most stringent provisions the execution of the fugitive slave law; securing the right of appeal in all constitutional cases to the Supreme Court of the United States; and requiring all officers of the government, legislative, executive and judicial, the judges and inspectors of all elections, and the attorneys of all courts, to take an oath to support the constitution of the State and of the United States. Such a constitution, if submitted to a vote of the whole people, would, in my opinion, be adopted by a very considerable majority."

It will be seen that the convention at Lecompton has adopted just such a constitution, with the single exception of the clause prohibiting the introduction of any more slaves; and *that clause* has been submitted to a fair and direct vote of the people themselves, *registered and unregistered*, thus leaving no possible pretence for complaint.

It is well known that the only real matter of controversy in Kansas was the question of slavery. Evidence to that effect could be accumulated almost without limit, establishing the fact. But the committee deem this unnecessary, as the fact itself will hardly be disputed by any one. Such being the case, no reasonable ground of complaint can be found; for that question was submitted to all the *bona fide* inhabitants for decision, on the 21st December. There is no pretence that any districts, counties, or persons were disfranchised

at *that* election. Every qualified voter, whether *registered or not registered*, had the unrestrained privilege of voting for or against slavery. Here, then, was the opportunity to settle the only existing difficulty, if it was desired. Would it not be very extraordinary to permit a factious portion of the people, in total disregard of the law, to stay willfully from the polls, when, according to law, and according to the published notice of Governor Walker, they were equally bound as if they had voted, and then claim the privilege of having a *resubmission?*

If it were true, that they had, as they assert, a majority opposed to slavery, they could have voted out the clause sanctioning that institution. By their own act the clause is retained; and then they desire to reject the *whole* constitution, because of the so-called obnoxious slavery clause, left in by their own willful refusal to vote. Such willfulness is not to be conciliated or tolerated in a country governed by laws. Suppose twenty additional opportunities should be afforded to the same people to vote on all these questions, who can guarantee that they will act better in the future than they have in the past? Who can say they will vote at all? And if not, would not the same objection now made be as valid then as it is now, with reference to their *non-action?* It seems to be, however, but carrying out their known political design to prevent the peaceful settlement of the question.

The only legal rule is, to adhere to the uniform practice of all the consititutional governments in the Union; and an opportunity having been afforded to all of registering their names and voting, *then*, to decide according to the majority thus cast, whether some of the people have voted, or neglected, or refused to vote. Governor Walker said to the people of Kansas in his official address:

"Throughout our whole Union, and wherever free government prevails, those who abstain from the exercise of the rights of suffrage, authorize those who do vote to act for them in that contingency, and the absentees are as much bound under the law and constitution—when there is no fraud or violence—by the majority of those who do vote, as though all had participated in the election. Otherwise, as voting must be voluntary, self-government would be impracticable, and monarchy and despotism would remain as the only alternative."

Admitting the truth of the proposition of Governor Walker, that those who abstain from voting authorize those who do vote to vote for them, it necessarily follows that the abolitionists of Kansas, if they are the majority of the people, as they claim to be, are directly responsible for the establishment of slavery in that Territory. And whether they constitute the majority or minority, the decision made is equally binding upon all.

"Popular sovereignty" has been invoked by some to defeat the Lecompton constitution. It is even alleged by those objectors that nothing but a submission of the whole constitution to a direct vote of the people would be a compliance with the provisions of the Kansas-Nebraska act, which declares the people of that Territory shall be perfectly free to form their domestic institutions in *their own way*. With this view of the subject the committee cannot agree.

Surely it will not be contended that this provision of the Kansas

organic law *diminished* the previous rights of the people in creating a State government. In all time past, since the declaration of independence, it has been uniformly admitted, without a single exception, that the people had the right of choice either to form their constitutions by their agents elected for that purpose, or to reserve the right to ratify the constitution by a subsequent direct vote of the people. In either case, and in both cases, it is the act of the people, and a full exercise of "popular sovereignty." If, therefore, the Kansas act had taken away the right of the people to act through their agents, it would be a *limitation* of their rights rather than an increase and improvement, as the friends of that measure have heretofore boasted. The people would, in that case, be confined to *one way only* in which to make a constitution, and would not be at liberty to choose *their own way*. Such a construction of the organic act is manifestly erroneous.

Having thus given a historical account of the matter referred for their consideration, your committee will briefly review the whole subject, unembarrassed by details. They will look at the subject as it originated, as it has been for three years, and as it now is.

The population of our country four years ago was principally confined by treaty and by law to the comparatively small region lying to the east of the river Mississippi. Iowa, Missouri, Arkansas, and part of Louisiana were found on the western bank. Also, on the extreme southern flank Texas; and Minnesotaon the northern. California and the settlements of Oregon were upon the Pacific coast; in the centre, New Mexico and Utah. The immense country lying between our scanty settlements upon the Pacific and the western boundaries of Iowa, Missouri and Arkansas, may be said, in general terms, and with the above exceptions, to have been unoccupied. Guarded by the Indian non-intercourse act and by Indian treaties, and without territorial organization, the country was rendered, by statutory prohibitions, an inaccessible solitude, which pioneer settlers might not legally disturb. Further extensions of settlement to the westward were thus arrested by law. The western border of three or four States was the western border of the United States until we reached the top of the *Sierra Nevada*, and looked down upon the long and narrow settlements upon the shores of the Pacific. The border States had become dissatisfied, and clamored for western expansion over the beautiful and fertile wilderness which, though extending for a continuous distance of a thousand miles, approached within three hundred miles of the Mississippi, was abandoned by the government to the exclusive *use* of wild, semi-civilized and vagrant Indian tribes. Unable longer to resist the demands of the west for the opening up to settlement of a country so contiguous, important, and valuable, and which had been neglected so long as to become a just cause of reproach to the government, Congress, in 1854, took into its serious consideration the justice and policy of organizing it into Territories.

But two difficulties were in the way of an organization: one was the question of Indian occupancy, the other that of African slavery. The first was easily adjusted; the second was the subject of long, heated, and angry discussion. More than one hundred speeches were

delivered in Congress at that session upon the slavery question. At length the whole country lying west of Missouri, Iowa, and Minnesota, east of Utah, Oregon, and Washington Territories, and north of the 37th and south of the 49th parallels of latitude was organized into *two* Territories, and named KANSAS and NEBRASKA.

The law organizing these Territories settled the slavery controversy, by providing that the people of them might form their domestic institutions in their *own way*, subject only to the Constitution of the United States; and to enable the people to do so without hindrance of any kind, there was inserted in the act a clause repealing all laws establishing, regulating, or prohibiting slave holding.

This settlement greatly pleased one party, and greatly displeased the other. The defeated anti-slavery party professed to believe that Congress had power, and ought to exercise it, to exclude slave property from territory which had been acquired by the joint efforts and at the common expense of *slave holders and non slave holders.*

The victorious democratic party believed that Congress had no such power under the Constitution, and that it would be *inequitable* to exercise it if it had; and, also, that in this particular case, such an exercise of power would be a flagrant violation of the third article of the treaty with France, by which the country was acquired.

Immediately after the passage of the act, people living in Missouri, upon the borders of Kansas, being well acquainted with the country, poured into that Territory in large numbers, and appropriated many of the most fertile, best watered, and best timbered tracts. Many of these carried their *slaves* with them. On the other hand, prior to the final passage of the Kansas-Nebraska bill, but after its passage became evident, certain members of Congress formed a secret association, which ultimately became public, to incite and aid the emigration into Kansas of persons opposed to the existence of slavery, for the express purpose of so carrying out its provisions as to cause an exclusion of the slave property of the southern States from the Territory. This secret combination of politicians to perpetrate sectional injustice was promptly followed by public ones, and moneys were collected in numerous places for the express purpose of aiding an effort to exclude southern property from Kansas. This sectional and fanatical purpose was, in practice, generally coupled with some one or more schemes of money making of a highly speculative character. This effort very naturally provoked counter efforts, and violent controversies between the assailants and the assailed followed.

The creators of *strife*, as often is the case, were worsted. Of the voters on that occasion this may be said: *many were bad men.* The scenes were, if possible, as disgraceful as those which have been such a scandalous reproach to the large cities of the Atlantic and Pacific States in violent, contested elections.

Immediately after the very first election, *many* of the voters belonging to each of the contending parties, and among them the *defeated candidate for delegate to Congress*, left the Territory, NEVER TO RETURN. Few of the emigrants from the various States, *other* than those from the adjacent State of Missouri, who alone had easy and early facilities for making themselves comfortable, passed the first winter in

Kansas, and many of the settlers in Kansas from *Missouri* passed the *winter* out of the Territory. But with the spring emigrants and disturbances returned to Kansas. During the whole of the second year (1855) it is believed the majority of the actual settlers in Kansas *were emigrants from the adjoining State.* But as the mass of the emigrants sent out to Kansas under the *inspiration of the abolitionists* were poorly fitted for labor in *unbroken* fields, and had to draw *largely* upon the aid of absent and fanatical friends for support, and as both the supported and the supporters were accustomed to *wrangling* and *disputation*, the Territory was quickly filled with *strife.* And as local contention and violence increased, so did the heat and the contributions of the remote supporters, until the turmoil in Kansas on one side matured into open defiance of all the laws of the Territory. The mere handful of emigrants were ostentatiously furnished, even by *religious men, amid prayers and hymns*, with destructive weapons, and encouraged to set up an independent government. This was only not put into *actual* operation, probably, but for the firmness of the government officers, backed by the troops of the United States. For near three years these turbulent spirits, thus encouraged by the restless and fanatical elsewhere, have kept the Territory in a state of anarchy and disorder. They have uniformly disregarded the laws, so far as it has been possible for them to do so. When elections were held, instead of peacefully participating in them, they disturbed and annoyed the voters in every conceivable way, and ended in holding elections upon days, and in a manner, unauthorized by law, and expressly to contravene the law.

When, at last, to end, if possible, these disorders and strifes, the legislature made provision for a vote of the people upon the question whether a State government should be formed by the making and adopting of a constitution, these organized disturbers *combined to prevent a full and fair vote.* So, likewise, when the convention had been ordered by a regular vote of the people to be called, the *armed mischief makers* threw every obstacle in the way of a full registration of the settlers legally entitled to vote for members of the convention; and then, when their violent, illegal, and bloody efforts had been partially successful, they filled the country with their *complaints* that the registration, *which they had resisted with arms*, had not been full and fair! And as the registration was not *absolutely* full and complete, they wished the people of the United States *to infer* that the election of the members of the convention was neither legal nor fair!! The people having, by direct vote, ordered the calling of a convention to form a constitution, the abolition agitators and disturbers refused to vote at the election of members of said convention, and then, after an obstinate refusal, raised an outcry that the convention was unjustly constituted inasmuch as they were not represented therein. After the formation of a constitution, they cried out against the constitution upon the ground that they had not been allowed to vote for its ratification, though they knew, before the election of the convention, that the convention had been clothed with full authority to make a constitution; they well knew that the bill providing for the election of members of the convention had been vetoed

by the governor upon the express ground that it enabled the convention to *make* a constitution, and that it had been made a law after a full consideration of such veto. They knew that the governor and the officers of the Territory, in various ways, had made great exertions to induce them to go to the polls like honest law-abiding citizens and vote for men who would respect their wishes, and that they had refused to heed these solicitations.

They also knew that the convention had not only afforded an opportunity for the good citizens who had registered themselves as voters according to law to decide whether slavery should or should not be established in Kansas as a legal institution, but had also allowed even those bad men who had disobeyed the laws, and who had combined to prevent a full registration, to vote with the registered voters upon this vital question; and they also knew that they refused to vote, even under such circumstances, upon this proposition!

The convention was called by a direct vote of the people in direct pursuance of law; the people, in pursuance of law, subsequently elected a convention to make a constitution; and, in strict pursuance of all the forms observed by such conventions, that convention, thus legally called and thus legally elected, did make a constitution. That constitution, thus legally created, is, if recognized by Congress, the supreme law of Kansas, and can only be changed by the people of Kansas who, through their legal representatives, have thus formally created it. No legislature of Kansas, after the people had, in pursuance of all the forms of law, called and elected a constitutional convention to make a constitution, could legally interfere with it either to increase or to lessen its powers. The convention, being the direct official representatives of the sovereignty of the people, could no more be restricted in its legitimate action by a legislature than could the people themselves be restricted had they been assembled, in person, in one great mass meeting, to make a constitution for their own government. Hence the work of that convention was final and complete, and must so remain, in all its parts, until changed by the people that called and elected the convention that made it. The vote on the single clause submitted on the 21st December, 1857, was a final vote; the convention itself, if reassembled, could neither change the constitution nor order a second vote. The power with which it was intrusted by the people is exhausted. Its members are now only private citizens, and, like other private citizens, must obey each and every requirement of the constitution which they severally helped to create. Far less can a thereto unauthorized executive, judiciary, or legislature change, alter, modify, or nullify the constitution made by the people through their selected representatives—representatives elected by the people themselves, and clothed with special, direct, and positive authority for that, and for no other purpose.

Good citizens, and representatives of good citizens, cannot, consistently, do anything expressly to uphold violators of law and known disturbers of the public peace. It is alike impolitic and unjust to grant the turbulent demands of the disorderly, be they few or many; it is wrong to aid them to overturn a constitution made by the law-abiding supporters of the government and laws of Kansas.

The more especially, when the habitual disturbers would not have any cause of complaint of any kind, *as they themselves loudly assert*, if they had listened to the earnest counsels of the President of their country, and the governor of their Territory, and exercised their right, and honestly performed their duty by voting upon either of three occasions—1st, when the vote was taken upon calling a convention; 2d, when the convention was elected; 3d, when the question was submitted whether the slavery clause should or should not be retained in the constitution. If the abolitionists were in a majority, as they so loudly boast, *and would not vote* against the establishment of slavery in Kansas, but allowed those who would vote to establish it, they have no just cause of complaint. If they were in a minority, as there is reason to believe, they have no cause of complaint; for the majority of the people voting, in accordance with the theories of all, ought to rule. Notwithstanding the noisy and incessant claims of the abolitionists to be considered a majority of the people of Kansas, the truth of those claims remains to be shown. Having been abundantly supplied with superior arms, such as Sharpe's rifles, Colt's revolvers, and bowie knives, and been trained for two or three years to their use, and to move in concert and in masses, the idle and the lawless men sent into Kansas by the fanatics of New England have become dangerous and formidable. But *their numbers* have been, it is believed, greatly exaggerated; their power consists in their superior organization and arms, and in their being supported in idleness. When called upon to vote for or against the calling of a convention to form a constitution, these mercenaries of political priests did not venture to measure strength at the polls with the democratic party of Kansas, but allowed the election to go by default.

So, again, when the members of the convention were elected, *the abolitionists shrunk from the contest*. So, also, when the question came up whether there should or should not be a clause retained in the constitution allowing slavery to be established in Kansas, *they again shrunk from the contest*, conscious of their weakness, or from sinister political design. It is possible there may be a majority of the citizens of Kansas from the non-slaveholding States, but all of them are not abolitionists or fanatics on the slave question. Why this continued absence of the abolitionists from the polls if they had the real strength with which to take possession of the legislature, and thus peacefully end all difficulties by having everything their own "way?"

At the late election of State officers thay exerted their strength in union *with certain favoring elements*, and so close was the contest, even when thus aided, that the result is as yet unknown.

The only election they ever carried was that which was held last fall, and their success is readily accounted for without resorting to the supposition that the abolitionists compose a majority, or even a fourth, of the voters of Kansas.

As to their vote upon the constitution, given upon the 4th of January last, two weeks after the day appointed by the only competent authority to appoint a day, little need be said, for it was utterly irregular, and was thrown upon a day other than the legal one, for the purpose of casting contempt upon the government. Votes cast

without lawful authority upon a question decided, and with a purpose to unfavorably affect what is lawful, orderly, and right, are entitled to no consideration at the hands of those who do not claim to favor lawlessness and anarchy.

That men who habitually set all law at defiance, and who consider all restraint upon their wishes as tyranny, should report that they have cast ten thousand votes against a constitution, when upon the same day, and at the same places, they were able to rally in favor of their candidates for office not so many voters by three or four thousand, will surprise no one, and influence no one. As good citizens, it was their duty to have voted on the lawful election day; as turbulent persons, they chose to vote *two weeks afterwards;* hence, had they numbered *millions*, their *numbers* would not conceal nor palliate, far less justify, their open disregard and contempt of law.

Some consider the submission of a constitution to a vote of the people for ratification as *necessary* to its validity. In this opinion the committee do not concur. The people may assemble, as in ancient days, in mass meeting, and make a constitution; they may elect representatives to make one for them; or they may elect representatives to draft one to be submitted to them for approval or rejection. The last method is most approved of during the past few years, though formerly the second method was very generally resorted to.

The calling of the constitutional convention of Kansas is generally conceded to have been strictly legal. The election of its members is also admitted to have been legal. Is it not logical to infer that a convention legally called, legally elected, and clothed with authority to make a constitution, can no more be interfered with by governor, judge, or legislator, either to increase or to diminish its powers, or to alter, modify, or nullify its acts, than the people could be interfered with had they assembled *en masse*, instead of by representatives? The legislature of a State may not alter or annul the constitution thereof unless thereto specially authorized by the people.

No election of officers under a constitution, no vote on the adoption of a constitution, held on a day prior, or on a day subsequent, to the day fixed by the lawfully constituted authorities, is considered valid in any State, or in any Territory, or in any city, county, or town in the United States, no matter how few or how many persons may engage in the lawless proceeding. No man can be chosen President, or governor, or mayor, or justice of the peace, but upon the days appointed by law; and, except by lawless and shameless desperadoes in Kansas, nowhere in the United States has this doctrine been *practically* controverted. If the monstrous practices of the bold, bad men of Kansas, now an exception, *are to be erected into a rule*, how long will it be ere some audacious sectional faction will find a pretence for holding a Presidential election on a day other than that appointed by the law? And when elections are held without law by factionists, and on a day subsequent to the day appointed by law, *their* candidates will always have most votes; the legal candidates will by them be pronounced the "minority candidates," and the irregular and illegal ones will be called the "majority candidates." Then will follow strife, bloodshed, and civil war. *Rights*, it must ever be borne in

mind, can be best and most surely upheld by strict adherence *to* law; outrages and crimes are easiest committed and best protected in the midst of civil commotion. There is no real and true safety to our liberties and institutions but in a strict adherence to the spirit and the letter of our constitutions and laws; and there is no danger to our peace and our Union that we cannot easily escape if we will conscientiously adhere to them. Who ever heard of a legislature, other than that of Kansas, which had the presumption to appoint a day, open polls, and request the people to vote for or against a constitution which had been finally adopted by the people two weeks before, and which nobody could change but the people, and they only by a formal action to that direct end? The action on the constitution on the 21st December, 1857, was final action, and that instrument was, on that day, a completed one; it can be changed, as all State constitutions can be; but, until formally and lawfully changed, it is valid; and its turbulent opponents will find that the validity of that fundamental law cannot be affected by a town meeting harangue, or by an irregular vote ordered by a rash body of heated partizans.

Many generous persons who are quite indisposed to countenance the violence and contumacy of the abolitionists sent into Kansas for the purpose of excluding therefrom all property not pleasing to them and their abettors, urge that *something* might be done to *lessen* the hardships that will fall upon them in the event of the admission of Kansas into the Union with the constitution made at Lecompton; that, although it is true the abolitionists violently opposed registration, would not vote at elections, held sham elections on days subsequent to those appointed by law, and even refused to vote against the establishment of slavery at a time when they professed to believe their doing so would have excluded it, and thus have peacefully settled the question to their own satisfaction, yet, they consider it would be too severe to compel such contumacious citizens, even though it is their own fault, to live under a constitution which, however grievous its provisions may prove to be, they cannot change, *without resorting to revolution*, until the year 1864.

To such, without resorting to the ready answer that Congress has no power to modify or alter a State constitution, and has expressly stipulated that the people of Kansas *shall be permitted to form their own institutions*, subject ONLY to the Constitution of the United States, two replies may be given. The first one is this: The clause complained of in the Lecompton constitution, in this connexion, is in these words:

"SEC 14. After the year one thousand eight hundred and sixty-four, whenever the legislature shall think it necessary to amend, alter, or change this constitution, they shall recommend to the electors at the next general election, two-thirds of the members of each house concurring to vote for or against calling a convention, and if it shall appear that a majority of all citizens of the State have voted for a convention, the legislature shall at its next regular session call a convention, to consist of as many members as there may be in the house of representatives at the time, to be chosen in the same manner, at the same places, and by the same electors that choose the representatives; said delegates so elected shall meet within three months after said election, for the purpose of revising, amending, or changing the con-

stitution, but no alteration shall be made to affect the rights of property in the ownership of slaves."

That this provision is not objectionable to the abolitionists, *in fact*, and is now urged by them and their friends *only for popular effect*, is proved by the overwhelming fact that the abolitionists of Kansas inserted in their "Topeka Constitution" the following more objectionable provision, viz:

"AMENDMENTS TO THE CONSTITUTION.—ARTICLE XVI.

"SECTION 1. All propositions for amendments to the constitution shall be made by the general assembly.

"SEC. 2. A concurrence of two-thirds of the members elected to each house shall be necessary, after which such proposed amendments shall be entered upon the journals with the yeas and nays; and the secretary of state shall cause the same to be published in at least one newspaper in each county in the State where a newspaper is published, for at least six months preceding the next election for senators and representatives, when such proposed amendment shall be again referred to the legislature elected next succeeding said publication. If passed by the second legislature by a majority of two-thirds of the members elected to each house, such amendments shall be republished, as aforesaid, for at least six months prior to the next general election, at which election such proposed amendments shall be submitted to the people for their approval or rejection, and if the majority of the electors voting at such election shall adopt such amendments, the same shall become a part of the constitution.

"SEC. 3. When more than one amendment is submitted at the same time, they shall be so submitted as to enable the electors to vote upon each amendment separately.

"SEC. 4. No convention for the formation of a new constitution shall be called, and no amendment to the constitution shall be, by the general assembly, made before the yea 1865, nor more than once in five years thereafter."

The second reply is this: Suppose the grievance *real*, and that it *ought* to be redressed, it is unnecessary for Congress to unlawfully interfere for that purpose, inasmuch as the Lecompton convention has provided a full, lawful, and perfect remedy for every conceivable grievance, and placed that remedy in the unrestricted hands of the majority of the people, by inserting in the constitution of Kansas the following distinct and unequivocal recognition of power, viz:

"All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit, and therefore they have at all times an inalienable and indefeasible right to alter, reform, or abolish their form of government in such manner as they may think proper."

The abolitionists of Kansas have thus far sought power by methods unknown to the law and by violence, and not through the peaceful agency of the ballot-box. Claiming to have a majority of the voters of the Territory, and therefore able to elect legislatures and conventions, they yet ask Congress to wrongfully do for them what they may, at legal times and legal places, rightfully do for themselves, that is, change or abolish their constitution. And in case Congress refuse to comply with their unconstitutional demand, they threaten to afflict the country with an attempt at bloodshed and revolution. Unless Congress will do for them what they assert they are

numerous enough to do for themselves, but which they wilfully refuse to do, they threaten to plunge the country into civil war. This conduct is so exceedingly unreasonable as to force the conviction upon the mind that they are conscious of being in a hopeless minority, and only expect to be able to compass their unwarrantable ends by *extorting* them from the general love of peace and quiet. If your committee are not greatly mistaken, those reckless men misjudge the American people, and will be required to seek peaceful methods for the redress of all their grievances, whether they be real or imaginary.

The committee do not approve the ordinance accompanying the constitution, and report against its allowance; but they do not regard it as any part of the constitution, nor will its approval or disapproval by Congress affect the validity of that constitution if the State be admitted into the Union as recommended.

In conclusion, this committee is of opinion that when a constitution of a newly formed State, created out of our own territory, is presented to Congress for admission into the Union, it is no part of the duty or privilege of Congress either to *approve* or *disapprove* the constitution itself, and its various provisions, *or any of them*, but simply to see whether it be the legal constitution of the new State; whether it be republican in form; whether the boundaries proposed be admissible; and whether the number of inhabitants be sufficient to justify independent State organization.

Believing that the paper presented is the legal constitution of Kansas, that it is republican in its form, that the boundaries proposed by it are admissible, and conceding the sufficiency of the population, the committee recommend the admission of Kansas into the Union upon the constitution presented, and report a bill accordingly.

APPENDIX.

AN ACT to provide for the call of a convention to form a State constitution.

Be it enacted by the governor and legislative assembly of the Territory of Kansas as follows:

SECTION 1. That there shall be, at the first general election to come off in October, 1856, a poll opened at the several places of voting throughout this Territory, for taking the sense of the people of this Territory upon the expediency of calling a convention to form a State constitution.

SEC. 2. It shall be the duty of the judges at the several election precincts in this Territory, at the election aforesaid, to cause a poll to be opened, which poll shall contain two columns, one to be headed "convention," the other "no convention;" and they shall cause the vote of each individual voter to be set in the appropriate column.

SEC. 3. All persons qualified by the laws of the Territory to vote for members of the general assembly shall be entitled to vote for or against said convention.

SEC. 4. At the close of said election, at the several precincts in this Territory, the judges thereof shall cause an abstract of the votes given for and against a convention to be made out and certified to by the secretary of the Territory.

SEC. 5. The secretary of the Territory shall, from the abstract of votes certified to him to be cast "for" and "against" "convention" by the said judges of elections, make a full report of the same to the next legislature thereof.

SEC. 6. If a majority of persons shall vote in favor of "convention" at said election held therefor, then it shall be the duty of the legislature held next after the said election, to provide for and make all necessary provisions for an election of members to said convention, defining their duties, &c.

This act to take effect and be in force from and after its passage.

AN ACT to provide for the taking a census, and the election of delegates to a convention.

Be it enacted by the governor and legislative assembly of the Territory of Kansas as follows:

SECTION 1. That for the purpose of making an enumeration of the inhabitants entitled to vote under the provisions of this act, an apportionment, and an election of members of a convention, it shall be the duty of the sheriffs of the several counties in Kansas Territory, and they are hereby required, between the first day of March and the first day of April, eighteen hundred and fifty-seven, to make an enumeration of all the free male inhabitants, citizens of the United States, over twenty-one years of age, and all other white persons actually residing within their respective counties, and for this purpose shall have power to appoint one or more deputies to assist in such duties, not to exceed one in each municipal township, each of whom, before entering upon his office, shall take and subscribe an oath or affirmation to support the Constitution of the United States and faithfully and impartially discharge the duties imposed on him by this act, according to the best of his skill and judgment, which oath or affirmation shall be administered to them severally, and be duly certified by a judge or clerk of the district court of the United States, or judge or clerk of the probate court for the several counties, or by a justice of the peace, and filed and recorded in the office of the secretary of the Territory.

SEC. 2. In case of any vacancy in the office of sheriff, the duties imposed on such sheriff by this act shall devolve upon, and be performed by, the judge of the probate court of the county in which such vacancy may exist, who may appoint deputies, not to exceed one in each municipal township; and in case the office of both sheriff and probate judge in any county shall be or become vacant, the governor

shall appoint some competent resident of such county to perform such duty, who shall have the same right to appoint deputies, take and subscribe the same oath, and perform all the requirements of this act, as applied to sheriffs.

SEC. 3. It shall be the duty of the sheriff, probate judge, or person appointed by the governor as herein provided, in each county or election district, or before the tenth day of April next, to file in the office of the probate judge for such county or election district, a full and complete list of all the qualified voters resident in his said county or election district, on the first day of April, eighteen hundred and fifty-seven, which list shall exhibit in a fair and legible hand the names of all such legal voters.

SEC. 4. It shall be, and is hereby made, the duty of each probate judge, upon such returns being made, without delay to cause to be posted at three of the most public places in each election precinct in his county or district one copy of such list of qualified voters, to the end that every inhabitant may inspect the same, and apply to said probate judge to correct any error he may find therein, in the manner hereafter prescribed.

SEC. 5. Said probate judge shall remain in session each day, Sundays excepted, from the time of receiving said returns until the first day of May next, at such places as shall be most convenient to the inhabitants of the county or election district, and proceed to inspection of said returns, and hear, correct, and finally determine according to the facts, without unreasonable delay, all questions concerning the omission of any person from said returns, or the improper insertion of any name on said returns, and any other questions affecting the integrity or fidelity of said returns, and for this purpose shall have power to administer oaths and examine witnesses, and compel their attendance in such manner as said judge shall deem necessary.

SEC. 6. That as soon as the said list of legal voters shall thus have been revised and corrected, it shall be the duty of the several probate judges to make out full and fair copies thereof, and without delay furnish to the governor of the Territory one copy, and to the secretary of the Territory one copy; and it shall be the duty of the governor to cause copies thereof, distinguishing the returns from each county or election district, to be printed and distributed generally among the inhabitants of the Territory, and one copy shall be deposited with the clerk of each court of record, or probate judge, within the limits of said Territory, and one copy delivered to each judge of the election, and at least three copies shall be posted up at each place of voting.

SEC. 7. It shall be the duty of the governor and secretary of the Territory, so soon as the census shall be completed and returns made, to proceed to make an apportionment of the members for the convention among the different counties and election districts in said Territory, in the following manner: the whole number of legal voters shall be divided by sixty, and the product of such division, rejecting any fraction of a unit, shall be ratio or rule of apportionment or members among the several counties or election districts; and if any county or election district shall not have a number of legal voters then ascer

tained equal to the ratio, it shall be attached to some adjoining county or district, and thus form a representative district; the number of said voters in each county or district shall then be divided by the ratio, and the product shall be the number of representatives apportioned to such county or district: *Provided*, that the loss in the number of members, caused by the fraction remaining in the several counties in the division of the legal voters thereof, shall be compensated by assigning so many counties or districts as have the largest fraction an additional member for its fraction, as may be necessary to make the whole number of representatives sixty.

SEC. 8. An election shall be held for members of a convention to form a constitution for the State of Kansas, according to the apportionment to be made as aforesaid, on the third Monday in June next, to be held at the various election precincts established in the Territory, in accordance with the provisions of the law on that subject; and, at such election, no person shall be permitted to vote unless his name shall appear upon said corrected list.

SEC. 9. The board of county commissioners shall appoint the places of voting for their respective counties or election districts; they shall appoint three suitable persons to be judges of the election at each place of voting; they shall cause a notice of the places of holding elections in their respective counties or districts to be published and distributed in every election district or precinct ten days before the day of election. If any judge of election so appointed shall fail or refuse to perform the duties of his said office, the legal voters assembled at the place, and on the day appointed for said election, shall have the power to fill such vacancy by election among themselves.

SEC. 10. The judges of election shall each, before entering on the discharge of his duties, make oath or affirmation that he will faithfully and impartially discharge the duties of judge of the election according to law, which oath shall be administered by any officer authorized to administer oaths; the clerks of election shall be appointed by the judges, and they shall take the like oath or affirmation, to be administered by one of the judges, or by any of the officers aforesaid. Duplicate returns of election shall be made and certified by the judges and clerks, one of which shall be deposited with the board of county commissioners for the county or district in which the election is held, and the other shall be transmitted to the secretary of the Territory; and the one having the highest number of votes in his county or election district shall be the representative for such county or district; and in case of a tie, or a contest in which it cannot be satisfactorily determined who was duly elected, the convention, when assembled, shall order a new election as herein provided.

SEC. 11. Every *bona fide* inhabitant of the Territory of Kansas on the third Monday of June, one thousand eight hundred and fifty-seven, being a citizen of the United States, over the age of twenty-one years, and who shall have resided three months next before said election in the county in which he offers to vote, and no other person whatever shall be entitled to vote at said election; and any person qualified as a voter may be a delegate to said convention, and no other.

SEC. 12. All persons hereby authorized to take the census, or to

assist in the taking thereof, shall have power to administer oaths and examine persons on oath, in all cases where it may be necessary to the full and faithful performance of their duties under this act.

SEC. 13. If any person by menaces, threats, or force, or by any other unlawful means, shall directly or indirectly attempt to influence any qualified voter in giving his vote, or deter him from going to the polls, or disturb or hinder him in the free exercise of his right of suffrage at said election, the person so offending shall be adjudged guilty of a misdemeanor, and punished by a fine not less than five hundred dollars, or by imprisonment not less than three months nor more than six, or by both.

SEC. 14. That every person, not being a qualified voter according to the provisions of this act, who shall vote at any election within said Territory knowing that he is not entitled to vote, and every person who at the same election shall vote more than once, whether at the same or a different place, shall be adjudged guilty of a misdemeanor, and punished by a fine of not less than one hundred dollars nor exceeding two hundred, or by imprisonment not less than three months nor exceeding six, or both.

SEC. 15. Any person whatsoever who may be charged with holding the election herein authorized, who shall wilfully and knowingly commit any fraud or irregularity whatever, with the intent to hinder, or prevent, or defeat a fair expression of the popular vote in the said election, shall be guilty of a misdemeanor, and punished by fine not less than five hundred dollars, nor more than one thousand dollars, and imprisonment not less than six months nor more than twelve months, or both.

SEC. 16. The delegates thus elected shall assemble in convention at the capitol of said Territory on the first Monday of September next, and shall proceed to form its constitution and State government, which shall be republican in its form, for admission into the Union, on an equal footing with the original States in all respects whatever, by the name of the State of Kansas.

SEC. 17. Said convention, when assembled, shall elect a presiding officer, and also other officers necessary for the transaction of their business; and the members and officers of said convention shall be entitled to receive the same compensation as the members and officers of the legislative assembly of Kansas Territory, to be paid out of any money in the treasury not otherwise appropriated.

SEC. 18. All sheriffs and other officers, for the discharge of the duties required of them by this act, shall be entitled to receive four dollars for each day they are necessarily employed.

SEC. 19. Doniphan county shall constitute the first election district; Brown and Nemeha the second; Atchison, the third; Leavenworth, the fourth; Jefferson, the fifth; Calhoun, the sixth; Marshall, the seventh; Riley, the eighth; Johnson, the ninth; Douglas, the tenth; Shawnee, Richardson, and Davis, the eleventh; Lykins, the twelfth; Franklin, the thirteenth; Weller, Breckenridge, Wise, and Madison, the fourteenth; Butler and Coffey, the fifteenth; Linn, the sixteenth; Anderson, the seventeenth; Bourbon, McGee, Donn, and Allen, the

eighteenth; Woodson, Wilson, Godfrey, Greenwood, and Hunter, the nineteenth.

SECTION 20. All votes given at the election herein provided for shall be *viva voce*.

SECTION 21. Returns of said enumeration shall be according to the following tabular form:

No.	Names of voters.	Heads of families and others.	Males.	Females.	Total.

This bill having been returned by the governor, with his objections thereto, and, after reconsideration, having passed both houses by the constitutional majority, it has become a law, this the 19th day of February, A. D. 1857.

PROCLAMATION OF THE ACTING GOVERNOR OF KANSAS.

UNITED STATES OF AMERICA,
Territory of Kansas.

To the legal voters and elective officers of Kansas:

Whereas, the following returns of the census taken under the act of the legislative assembly entitled "An act to provide for the taking of a census and election of delegates to a convention," passed the 19th February, 1857, have been made to me, to wit:

Districts.	Counties.	No. of legal voters.	Whole population.
1.	Doniphan	1,086	4,120
2.	Brown	206	no returns
2.	Nemeha	140	612
3.	Atchison	804	2,807
4.	Leavenworth	1,837	5,529
5.	Jefferson	555	no returns
6.	Calhoun	291	885
7.	Marshall	206	415
8.	Riley	353	no returns
8.	Pottawatomie	205	no returns

Districts.	Counties.	No. of legal voters.	Whole population.
9.	Johnson	496	890
10.	Douglas	1,318	3,727
11.	Shawnee	283	
11.	Richardson		
11.	Davis		
12.	Lykens	413	1,352
13.	———	no returns	
14.	———	no returns	
15.	———	no returns	
16.	Linn	413	1,821
17.	———	no returns	
18.	Bourbon, McGee, Dorn, and Allen	645	2,622
Total		9,251	

Now, therefore, I, Frederick P. Stanton, secretary and acting governor, do hereby proclaim that, according to the provisions of the said act and the census returns made in pursuance thereof, and upon a proper apportionment among the legal voters of the several districts aforesaid, they are respectively entitled to elect to the convention provided for in said law the number of delegates herein assigned to them—that is to say:

To the 1st district—Doniphan county, 7 delegates.
To the 2d district—Brown and Nemeha, 2 delegates.
To the 3d district—Atchison county, 5 delegates.
To the 4th district—Leavenworth, 12 delegates.
To the 5th district—Jefferson, 4 delegates.
To the 6th district—Calhoun, 2 delegates.
To the 7th district—Marshall, 1 delegate.
To the 8th district—Riley and Pottawatomie, 4 delegates.
To the 9th district—Johnson, 3 delegates.
To the 10th district—Douglass, 8 delegates.
To the 11th district—Shawnee, Richardson and Davis, 2 delegates.
To the 12th district—Lykens, 3 delegates.
To the 16th district—Linn, 3 delegates.
To the 18th district—Bourbon, McGee, Dorn and Allen, 4 delegates.

The proper officers will hold the election for delegates to the said convention on the third Monday of June next, as directed by the law aforesaid, and in accordance with the apportionment herein made and declared.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the Territory, at Lecompton, this the 20th May, 1857.

[L. S.]

FRED. P. STANTON.

[Received on Saturday night, 30th ultimo, from Colonel Clarkson.—J. B.]

LECOMPTON, K. T., *January* 14, 1858.

SIR: The bearer of this, Colonel J. J. Clarkson, will deliver to you an authentic copy of the constitution recently framed by the convention which assembled at Lecompton on the 5th day of September, 1857. By the terms of that constitution, and the action of the people under it, it is made my duty to have the same submitted to the action of the Congress of the United States, with the view of the admission of Kansas into the Union as an independent State. It is hoped, therefore, that it will be presented by you to the consideration of Congress, with such suggestions as you may think advisable to submit.

The question whether this constitution should contain a clause making Kansas a slave State or not was submitted to a vote of the people of the Territory on the 21st day of December, 1857, and resulted as follows:

For the constitution with slavery.....	6,226
For the constitution with no slavery.....	569
Total vote for the constitution..	6,795

The votes for the two sides of the constitution is a majority over any vote previously given at any election holden in the Territory.

The constitution is, therefore, by its own requirements, presented to the consideration of Congress, and Kansas asks for admission into the Union as a sovereign State.

I am, very respectfully, your obedient servant,

J. CALHOUN,
President of the Constitutional Convention.

His Excellency JAMES BUCHANAN,
President of the United States.

CONSTITUTION OF THE STATE OF KANSAS.

PREAMBLE.

We, the people of the Territory of Kansas, by our representatives in convention assembled at Lecompton, in said Territory, on Monday the fourth day of September, one thousand eight hundred and fifty-seven, and of the independence of the United States of America the eighty-second year, having the right of admission into the Union as one of the United States of America, consistent with the federal Constitution and by virtue of the treaty of cession by France to the United States of the province of Louisiana, made and entered into on the thirtieth day of April, one thousand eight hundred and three, and by virtue of, and in accordance with, the act of Congress passed March the thirtieth, one thousand eight hundred and fifty-four, entitled "An act to organize the Territories of Nebraska and Kansas," in order to secure to ourselves and our posterity the enjoyment of all the rights of life, liberty, and property, and the free pursuit of happiness, do mutually agree with each other to form ourselves into a free, independent, and sovereign State by the name and style of the State of Kansas, and do ordain and establish the following constitution for the government thereof:

ARTICLE I.—*Boundaries.*

We do declare and establish, ratify and confirm the following as the permanent boundaries of the said State of Kansas, that is to say: Beginning at a point on the western boundary of the State of Missouri where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary westward to the east boundary of the Territory of Utah, on the summit of the Rocky mountains; thence northward on said summit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State, to the place of beginning.

ARTICLE II.—*County Boundaries.*

No county now established which borders upon the Missouri river, or upon either bank of the Kansas river, shall ever be reduced by the formation of new counties to less than twenty miles square; nor shall any other county now organized, or hereafter to be organized, be reduced to less than five hundred square miles.

ARTICLE III.—*Distribution of Powers.*

The power of the government of the State of Kansas shall be divided into three separate departments—the executive, the legislative, and the judicial; and no person charged with the exercise of powers pro-

perly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

ARTICLE IV.—*Executive Department.*

SECTION 1. The chief executive power of this State shall be vested in a governor, who shall hold his office for two years from the time of his installation.

SEC. 2. The governor shall be elected by the qualified electors of the State. The returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the secretary of state, who shall deliver them to the speaker of the house of representatives at the next ensuing session of the legislature, during the first week of which session the speaker shall open and publish them in the presence of both houses of the legislature. The person having the highest number of votes shall be governor; but if two or more shall be equal, and having received the highest number of votes, then one of them shall be chosen governor by the joint ballot of both houses of the legislature; contested elections for governor shall be determined by both houses of the legislature in such manner as may be prescribed by law.

SEC. 3. The governor shall be at least thirty years of age, shall have been a citizen of the United States for twenty years, shall have resided in this State at least five years next preceding the day of his election, or from the time of the formation of this constitution, and shall not be capable of holding the office more than four years in any term of six years.

SEC. 4. He shall, at stated terms, receive for his services a compensation which shall be fixed by law, and shall not be increased or diminished during the term for which he shall be elected.

SEC. 5. He shall be commander-in-chief of the army and navy of this State, and of the militia, except when they shall be called into the service of the United States.

SEC. 6. He may require information in writing from officers in the executive department on any subject relating to the duties of their respective offices.

SEC. 7. He may, in cases of emergency, convene the legislature at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy or disease; and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he may think proper, not beyond the next stated meeting of the legislature.

SEC. 8. He shall, from time to time, give to the legislature information of the state of the government, and recommend to their consideration such measures as he may deem necessary and expedient.

SEC. 9. He shall take care that the laws be faithfully executed.

SEC. 10. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons and remit fines; and in cases of forfeitures, to stay the collection until the end of the next session of the legislature, and to remit for

feitures by and with the advice and consent of the senate. In cases of treason he shall have power to grant reprieves by and with the advice and consent of the senate, but may respite the sentence until the end of the next session of the legislature.

SEC. 11. All commissions shall be in the name and by the authority of the State of Kansas, be sealed with the great seal, and signed by the governor, and attested by the secretary of state.

SEC. 12. There shall be a seal of this State, which shall be kept by the governor and used by him officially, and the present seal of this Territory shall be the seal of the State until otherwise directed by the legislature.

SEC. 13. All vacancies not provided for in this constitution shall be filled in such manner as the legislature may prescribe.

SEC. 14. The secretary of state shall be elected by the qualified electors of the State, and shall continue in office during the term of two years, and until his successor is qualified. He shall keep a fair register of all the official acts and proceedings of the governor, and shall, when required, lay the same and all papers, minutes, and vouchers relative thereto, before the legislature, and shall perform such other duties as may be required by law.

SEC. 15. Every bill which shall have passed both houses of the legislature shall be presented to the governor. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it shall have originated, which shall enter the objections at length upon their journals, and proceed to reconsider it. If, after such reconsideration, two thirds of the house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered; if approved by two-thirds of that house, it shall become a law; but in such case, the votes of each house shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journals of each house, respectively. If any bill shall not be returned by the governor within six days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if he had signed it, unless the legislature, by their adjournment, prevent its return, in which case it shall not become a law.

SEC. 16. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except resolutions for the purpose of obtaining the joint action of both houses, and on questions of adjournment, shall be presented to the governor, and, before it shall take effect, be approved by him; or, being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in case of a bill.

SEC. 17. A lieutenant governor shall be elected at the same time and for the same term as the governor, and his qualifications and the manner of his election shall be the same in all respects.

SEC. 18. In case of the removal of the governor from office, or of his death, failure to qualify, resignation, removal from the State, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the lieutenant gov-

ernor, and the legislature shall provide by law for the discharge of the executive functions in other necessary cases.

SEC. 19. The lieutenant governor shall be president of the senate, but shall have no vote except in the case of a tie, when he may give the casting vote; and while acting as such shall receive a compensation equal to that allowed to the speaker of the house of representatives.

SEC. 20. A sheriff, and one or more coroners, a treasurer and surveyor shall be elected in each county by the qualified electors thereof, who shall hold their office for two years, unless sooner removed, except that the coroner shall hold his office until his successor be duly qualified.

SEC. 21. A state treasurer and auditor of public accounts shall be elected by the qualified electors of the State, who shall hold their offices for the term of two years, unless sooner removed.

ARTICLE V.—*Legislative Department.*

SECTION 1. The legislative authority of this State shall be vested in a legislature, which shall consist of a senate and house of representatives.

SEC. 2. No person holding office under the authority of the United States, except postmasters, or any lucrative office under the authority of this State, shall be eligible to or have a seat in the legislature; but this provision shall not extend to township officers, justices of the peace, notaries public, or militia officers.

SEC. 3. No person who has been, or may hereafter be convicted of a penitentiary offence, or of an embezzlement of the public funds, shall hold any office in this State; nor shall any person holding public money for disbursement or otherwise have a seat in the legislature until he shall have accounted for and paid such money into the treasury.

SEC. 4. The members of the house of representatives shall be elected by the qualified electors, and shall serve for the term of two years from the close of the general election and no longer.

SEC. 5. The senators shall be chosen for the term of four years at the same time, in the same manner, and at the same places as are herein provided for members of the house of representatives.

SEC. 6. At the first session of the legislature the senate shall, by lot, divide their senators into two classes; and the seats of the senators of the first class shall be vacated at the expiration of the second year, and of the second class at the expiration of the fourth year, so that one half, as near as may be, may be chosen thereafter every two years for the term of four years.

SEC. 7. The number of senators shall not be less than thirteen nor more than thirty-three; and at any time when the number of senators is increased, they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as possible.

SEC. 8. The number of members of the house of representatives shall not be less than thirty-nine, nor more than one hundred.

SEC. 9. The style of the laws of this State shall be, "Be it enacted by the legislature of the State of Kansas."

SEC. 10. Each house may determine the rules of its own proceedings, punish its members for disorderly behaviour, and, with the consent of two-thirds, may expel a member; but not a second time for the same offence. The names of the members voting on the question shall be spread upon the journal.

SEC. 11. Each house during the session may, in its discretion, punish by fine, imprisonment, or both, any person not a member, for disrespectful or disorderly behavior in its presence, or for obstructing any of its proceedings: provided such fine shall not exceed two hundred dollars, or such imprisonment shall not extend beyond the end of the session.

SEC. 12. Each house of the legislature shall keep a journal of its proceedings, and cause the same to be published as soon after the adjournment as may be provided by law.

SEC. 13. Neither house during the session of the legislature shall, without consent of the other, adjourn for more than three days, (Sundays excepted,) nor to any other place than that in which they may be sitting.

SEC. 14. The senate when assembled shall choose its officers, and the house of representatives shall choose a speaker and its other officers, and each branch of the legislature shall be the judge of the qualifications, elections, and returns of its members.

SEC. 15. A majority of each house of the legislature shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner as each house may prescribe.

SEC. 16. Each member of the legislature shall receive from the public treasury such compensation for his services as may be fixed by law; but no increase of compensation shall take effect during the term for which the members are elected when such law passed.

SEC. 17. Bills may originate in either house, but may be altered, amended, or rejected by the other, and all bills shall be read by sections on three several days, except on an extraordinary occasion; two-thirds of the members may dispense with such reading, but in no case shall a bill be passed without having once been read; and every bill having passed both houses shall be signed by the speaker and president in the presence of their respective houses.

SEC. 18. The legislature shall provide by law for filling all vacancies that may occur in either house by the death, resignation, or otherwise, of any of its members.

SEC. 19. The doors of each house shall be open, except on such occasions as, in the opinion of the house, the public safety may require secrecy.

SEC. 20. Every law enacted by the legislature shall embrace but one subject, and that shall be expressed in its title, and any extraneous matter introduced in a bill which shall pass shall be void; and no law shall be amended by its title, but in such case the act or section amended shall be re-enacted and published at length.

SEC. 21. Every act and joint resolution shall be plainly worded, avoiding, as far as practicable, the use of technical terms.

SEC. 22. The legislature shall meet every two years at the seat of government.

SEC. 23. The legislature shall provide for an enumeration of inhabitants by law. An apportionment of representatives in the legislature shall be provided by law according to population, as nearly equal as may be.

SEC. 24. The legislature shall have no power to grant divorces, to change the names of individuals, or direct the sales of estates belonging to infants or other persons laboring under legal disabilities, by special legislation, but by general laws shall confer such powers on the courts of justice.

SEC. 25. It shall be the duty of all civil officers of this State to use due diligence in the securing and rendition of persons held to service or labor in this State, either of the States or Territories of he United States; and the legislature shall enact such laws as may be necessary for the honest and faithful carrying out of this provision of the constitution.

ELECTION DISTRICTS.

At the first election holden under this constitution for members of the State legislature, the representative and senatorial districts shall be as follows: The first representative district shall consist of Doniphan county, and be entitled to four representatives; the second, Atchison, four representatives; the third, Leavenworth, eight representatives; the fourth, Brown and Nemaha, one representative; the fifth, Calhoun and Pottawatomie, one representative; the sixth, Jefferson, two representatives; the seventh, Marshall and Washington, one representative; the eighth, Riley, one representative; the ninth, Johnson, four representatives; tenth, Lykins, one representative; the eleventh, Linn, two representatives; the twelfth, Bourbon, two representatives; the thirteenth, McGee, Dorn, and Allen, one representative; the fourteenth, Douglas, five representatives; the fifteenth, Anderson and Franklin, one representative; the sixteenth, Shawnee, two representatives; the seventeenth, Weller and Coffee, one representative; the eighteenth, Woodson, Wilson, Godfrey, Greenwood, and Madison, one representative; the nineteenth, Breckenridge and Richardson, one representative; the twentieth, Davis, Wise, Butler, Hunter, and that portion of country west, one representative. In all, forty-four representatives. The first senatorial district shall be Doniphan county, and be entitled to one senator; the second, Atchison, one senator; the third, Doniphan and Atchison, one senator; the fourth, Leavenworth, three senators; the fifth, Brown, Nemeha, and Pottawattomie, one senator; the sixth, Riley, Marshall, Dickinson, and Washington, one senator; the seventh, Jefferson and Calhoun, one senator; eighth, Johnson, two senators; the ninth, Lykins, Anderson, and Franklin, one senator; the tenth, Linn, one senator; the eleventh, Bourbon and McGee, one senator; the twelfth, Douglas, two senators; the thirteenth, Sawnee, one senator; the fourteenth, Dorn, Allen, Wilson, Woodson, Godfrey, Greenwood, Madison, and Coffee, one senator; the fifteenth, Richardson, Davis, Wise, Brecken-

ridge, Butler, Hunter, and all west of Davis, Wise, Butler, and Hunter, one senator. The entire number of senators, nineteen.

ARTICLE VI.—*Judiciary.*

SECTION 1. This judicial powers of this State shall be vested in one supreme court, circuit courts, chancery courts, courts of probate, and justices of the peace, and such other inferior courts as the legislature may, from time to time, ordain and establish.

SEC. 2. The supreme court, except in cases otherwise directed in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law: *Provided*, That the supreme court shall have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other remedial and original writs as may be necessary to give a general superintendence and control of inferior jurisdictions.

SEC. 3. There shall be held annually, at the seat of government, two sessions of the supreme court, at such times as the legislature may direct.

SEC. 4. The supreme court shall consist of one chief justice and two associate justices.

SEC. 5. The supreme court may elect a clerk and reporter, who shall respectively receive such compensation as the legislature may prescribe.

SEC. 6. The State shall be divided into convenient circuits, and for each circuit there shall be elected a judge, who shall, at the time of his election, and as long as he continues in office, reside in the circuit for which he has been elected.

SEC. 7. The circuit courts shall have original jurisdiction of all matters, civil and criminal, within this State not otherwise excepted in this constitution; but in civil cases only where the matter in controversy shall exceed the sum of one hundred dollars.

SEC. 8. A circuit court shall be held in each county in the State twice in every year, at such times and places as may be prescribed by law; and the judges of the several circuit courts may hold courts for each other when they may deem it advisable, and shall do so when directed by law.

SEC. 9. The legislature may establish a court or courts of chancery with original and appellate equity jurisdiction, and until the establishment of such court or courts the said jurisdiction shall be vested in the judges of the circuit courts respectively; but the judges of the several circuit courts shall have power to issue writs of injunction returnable to the court of chancery.

SEC. 10. The legislature shall establish within each county in the State a court of probate for the granting of letters testamentary of the administration, and orphan's business, and the general superintendence of the estates of deceased persons, and such other duties as may be prescribed by law; but in no case shall they have jurisdiction in matters of civil or criminal law.

SEC. 11. A competent number of justices of the peace in and for each county shall be elected in such mode and for such term of office as the

legislature may direct. Their jurisdiction in civil matters shall be limited to cases in which the amount does not exceed one hundred dollars; and in all cases tried by justices of the peace the right of appeal shall be secured under such rules and regulations as may be prescribed by law.

SEC. 12. The chief justice and associate justices of the supreme court, and judges of the circuit court, and courts of chancery, shall, at stated times, receive for their services a compensation which shall be fixed by law, and shall not be diminished during their continuance in office; but they shall receive no fees, no perquisites of office, nor hold any other office of profit or trust under this State, the United States, *or* either of the other States, or any other power during their continuance in office.

SEC. 13. The chief justice and associate justices of the supreme court shall be elected by the qualified voters of the whole State, the judges of the circuit courts by the qualified voters of their respective circuits, and the judges of the chancery courts shall be elected by the qualified voters of their respective chancery divisions, at such times and places as may be prescribed by law; but said election shall not be on the same day that the election of members of the legislature is held.

SEC. 14. All vacancies in the office of chief justice and associate justices of the supreme court, and judges of the circuit court, court of chancery, and probate court, shall be filled by appointment made by the governor for the time being, but the governor shall, immediately upon the receipt of information of a vacancy aforesaid, order an election to fill such vacancy, first giving sixty days' notice of such election.

SEC. 15. The chief justice and associate justices of the supreme court shall hold their offices for and during the period of six years from the date of their election, and until their successors shall be qualified, and provision shall be made by law for classifying those elected, so that the chief justice or one of the said associate justices of the supreme court shall be elected every two years. The judges of the circuit, chancery, and probate courts shall hold their offices for and during the term of four years from the date of their election, and until their successors shall be qualified.

SEC. 16. Clerks of the circuit courts and courts of probate shall be elected by the qualified electors in each county, and all vacancies in such office shall be filled in such manner as the law may direct.

SEC. 17. The chief justice and associate justices of the supreme court, by virtue of their offices, shall be conservators of the peace throughout the State, the judges of the circuit court throughout their respective circuits, and the judges of the inferior courts throughout their respective counties.

SEC. 18. The style of all process shall be, the State of Kansas, and all prosecutions shall be carried on in the name and by the authority of the State of Kansas, and shall conclude against the peace and dignity of the same.

SEC. 19. There shall be an attorney general of the State, who shall be elected by the qualified voters thereof, and as many district attornies as the legislature may deem necessary, to be elected by the

qualified voters of their respective circuits, who shall hold their offices for the term of four years from the date of their election, and shall receive for their services such compensation as may be established by law, which shall not be diminished during their continuance in office.

SEC. 20. Vacancies occuring in the office of attorney general, district attornies, clerk of the circuit court, clerk of the court of probate, justices of the peace, and constables, shall be filled in such manner as shall be provided by law.

SEC. 21. The house of representatives shall have the sole power of impeachment.

SEC. 22. All impeachments shall be tried by the senate; when sitting for that purpose the senators shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present.

SEC. 23. The governor and all civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than to removal from office, and of disqualification to hold any office of honor, trust, or profit under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, and punishment according to law.

ARTICLE VII.—*Slavery.*

SECTION 1. The right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave and its increase is the same, and as inviolable as the right of the owner of any property whatever.

SEC. 2. The legislature shall have no power to pass laws for the emancipation of slaves without the consent of the owners, or without paying the owners previous to their emancipation a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to the State from bringing with them such persons as are deemed slaves by the laws of any one of the United States or Territories, so long as any person of the same age or description shall be continued in slavery by the laws of this State: *Provided,* That such person or slave be the bona fide property of such emigrants: *And provided, also,* That laws may be passed to prohibit the introduction into this State of slaves who have committed high crimes in other States or Territories. They shall have power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have power to oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injuries to them extending to life or limb, and, in case of their neglect or refusal to comply with the direction of such laws, to have such slave or slaves sold for the benefit of the owner or owners.

SEC. 3. In the prosecution of slaves for crimes of higher grade than petit larceny, the legislature shall have no power to deprive them of an impartial trial by a petit jury.

SEC. 4. Any person who shall maliciously dismember, or deprive a

slave of life shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection of such slave.

ARTICLE VIII.—*Elections and Rights of Suffrage.*

SECTION 1. Every male citizen of the United States, above the age of twenty-one years, having resided in this State one year, and in the county, city, or town in which he may offer to vote, three months next preceding any election, shall have the qualifications of an elector, and be entitled to vote at all elections. And every male citizen of the United States, above the age aforesaid, who may be a resident of the State at the time that this constitution shall be adopted, shall have the right of voting as aforesaid; but no such citizen or inhabitant shall be entitled to vote except in the county in which he shall actually reside at the time of the election.

SEC. 2. All voting by the people shall be by ballot.

SEC. 3. Electors, during their attendance at elections, going to and returning therefrom, shall be privileged from arrest in all cases except treason, felony, and breach of the peace.

SEC. 4. No elector shall be obliged to do militia duty on the days of election, except in time of war or public danger.

SEC. 5. No elector shall be deemed to have lost his residence in this State by reason of his absence on business of his own, or of the United States, or of this State.

SEC. 6. No person employed in the military, naval, or marine service of the United States stationed in this State shall, by reason of his services therein, be deemed a resident of this State.

SEC. 7. No person shall be elected or appointed to any office in this State, civil or military, who shall not be possessed of the qualifications hereinbefore prescribed for an elector.

SEC. 8. The legislature shall have power to exclude from the privilege of voting, or being eligible to office, any person convicted of bribery, perjury, or other infamous crimes.

SEC. 9. The first general election in this State shall be held on the day and year provided by this constitution, and all general elections thereafter on the day and year provided by subsequent legislative enactment.

ARTICLE IX.—*Finance.*

SECTION 1. The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall from time to time prescribe.

SEC. 2. The legislature shall provide for an annual tax sufficient to defray the estimated expenses of the government for each year; and whenever the expenses of any one year shall exceed the income, the legislature shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency as well as the estimated expenses for such ensuing year.

SEC. 3. For the purpose of defraying extraordinary expenditures,

the State may contract public debts; but such debts, in the aggregate, shall never exceed five hundred thousand dollars. Every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein, and a vote of a majority of all the members elected to both houses shall be necessary to the passage of such law, and such law shall provide for an annual tax to be levied sufficient to pay the interest of such debt created, and such appropriation shall not be repealed, nor the taxes postponed, until the principal and interest of such debt shall have been wholly paid.

SEC. 4. The legislature may also borrow money for the purpose of repelling invasion, suppressing insurrection, and defending the State in time of war; but the money thus raised shall be applied exclusively to the purposes for which it was raised.

SEC. 5. No scrip, certificate or other evidence of State debt shall be issued, except for such debts as are authorized by the third or fourth sections of this article.

SEC. 6. The property of the State and counties, both real and personal, and such other property as the legislature may deem necessary for school, religious, or charitable purposes, may be exempted from taxation.

SEC. 7. No money shall at any time be paid out of the treasury except in pursuance of an appropriation by law.

SEC. 8. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the legislature.

ARTICLE X.—*Revenue.*

SECTION 1. All bills for raising revenue shall originate in the house of representatives.

SEC. 2. Taxation shall be equal and uniform, and all property on which taxes shall be levied shall be taxed in proportion to its value, to be ascertained as directed by legislative enactment, and no one species of property shall be taxed higher than another species of property of equal value on which taxes shall be levied.

SEC. 3. The legislature shall have power to levy an income tax, and to tax all persons pursuing any occupation, trade, or profession.

SEC. 4. The legislature shall provide for the classification of the lands of this State into three distinct classes, to be styled respectively Class One, Two, Three, and each of these classes shall have a fixed value in so much money, upon which there shall be assessed an *ad valorem* tax.

SEC. 5. The legislature shall provide for a capitation or poll tax, to be paid by every able bodied male citizen over twenty-one years and under sixty years of age, but nothing herein contained shall prevent the exemption of taxable polls in cases of bodily infirmity.

SEC. 6. The legislature shall levy a tax on all railroad incomes proceeding from gifts of public lands at the rate of ten cents on the one hundred dollars.

SEC. 7. No lotteries shall be authorized by law as a source of revenue.

SEC. 8. Whatever donations of lands or money that may be received from the general government by this State shall be regarded as a source of revenue subject to a compact made with the United States by special ordinance.

ARTICLE XI.—*Public Domain and Internal Improvement.*

SECTION 1. It shall be the duty of the legislature to provide for the prevention of waste and damage of the public land now possessed or that may hereafter be ceded to the Territory or State of Kansas, and it may pass laws for the sale of any part or portion thereof, and, in such case, provide for the safety, security, and appropriation of the proceeds.

SEC. 2. A liberal system of internal improvements being essential to the development of the resources of the country, shall be encouraged by the government of this State; and it shall be the duty of the legislature, as soon as practicable, to ascertain by law proper objects of improvement, in relation to roads, canals, and navigable streams, and to provide for a suitable application of such funds as may be appropriated for such improvements.

ARTICLE XII.—*Corporations.*

SECTION 1. Corporations may be formed under a general law, but the legislature may by special act create bodies politic for municipal purposes, where the objects of the corporations cannot be attained under it; all general laws or special acts enacted under the provisions of this section may be altered, amended, or repealed by the legislature at any time.

SEC. 2. No corporation shall take private property for public use without first having the consent of the owner, or where the necessity thereof being first established by a verdict of a jury, and the value thereof assessed and paid.

SEC. 3. It shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses.

SEC. 4. The legislature may incorporate banks of deposit and exchange, but such banks shall not issue any bills, notes, checks, or other paper as money.

SEC. 5. The legislature may incorporate one bank of discount and issue, with not more than two branches, provided that the act incorporating the said bank and branches thereof shall not take effect until it shall be submitted to the people at the general election next succeeding the passage of the same, and shall have been approved by a majority of the electors voting at such election.

SEC. 6. The said bank and branches shall be mutually liable for each other's debts or liabilities for all paper credits or bills issued representing money; and the stockholders in said bank or branches shall be individually responsible to an amount equal to the stock held by them for all debts or liabilities of said bank or branches, and no

law shall be passed sanctioning directly or indirectly the suspension by said bank or its branches of specie payment.

SEC. 7. The State shall not be a stockholder in any bank, nor shall the credit of the State be given or loaned in aid of any person, association, or incorporation, nor shall the State become a stockholder in any corporation or association.

ARTICLE XIII.—*Militia.*

SECTION 1. The militia of this State shall consist of all the able-bodied male citizens of the State between the ages of eighteen and forty-five years, except such citizens as are now, or hereafter may be, exempted by the laws of the United States or of this State.

SEC. 2. Any citizen whose religious tenets conflict with bearing arms, shall not be compelled to do militia duty in time of peace, but shall pay such an equivalent for personal services as may be prescribed by law.

SEC. 3. All militia officers shall be elected by the persons subject to military duty within the bounds of their several companies, battalions, regiments, brigades and divisions, under such rules and regulations as the legislature may, from time to time, direct and establish.

ARTICLE XIV.—*Education.*

SECTION 1. A general diffusion of knowledge being essential to the preservation of the rights and liberties of the people, schools and the means of education shall be forever encouraged in this State.

SEC. 2. The legislature shall take measures to preserve from waste and damage such lands as have been, or hereafter may be, granted by the United States, or lands or funds which may be received from other sources, for the use of schools within this State, and shall apply the funds which may arise from such lands, or from any other source, in strict conformity with the object of the grant.

SEC. 3. The legislature shall, as soon as practicable, establish one common school (or more) in each township in the State, where the children of the township shall be taught *gratis*.

SEC. 4. The legislature shall have power to make appropriations from the State treasury for the support and maintenance of common schools whenever the funds accruing from the lands donated by the United States, or the funds received from other sources, are insufficient for that purpose.

SEC. 5. The legislature shall have power to pass laws for the government of all common schools within this State.

ARTICLE XV.—*Miscellaneous.*

SECTION 1. Lecompton shall be the seat of government until otherwise directed by law, two-thirds of each house of the legislature concurring in the passage of such law.

SEC. 2. Every person chosen or appointed to any office under this State before entering upon the discharge of its duties shall take an

oath or affirmation to support the Constitution of the United States, the constitution of this State, and all laws made in pursuance thereof, and faithfully to demean himself in the discharge of the duties of his office.

SEC. 3. The laws, public records, and the written, judicial, and legislative proceedings of the State, shall be conducted, promulgated, and preserved in the English language.

SEC. 4. Aliens who are or who may hereafter become *bona fide* residents of this State, shall enjoy the same rights, in respect to the possession, inheritance, and enjoyment of property, as native born citizens.

SEC. 5. No county seat shall be removed until the point to which it is proposed to be removed shall be fixed by law, and a majority of the votes of the county voting on the question shall have voted in favor of its removal to such point.

SEC. 6. All property, both real and personal, of the wife, owned or claimed by marriage, and that acquired afterwards by gift, devise, or descent, shall be her separate property, and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

SEC. 7. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SEC. 8. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

BILL OF RIGHTS.

That the great and essential principles of liberty and free government may be recognized and established, we declare—

1. That all freemen, when they form a social compact, are equal in rights, and that no man or set of men are entitled to exclusive separate public emoluments or privileges, but in consideration of public services.

2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and therefore they have at all times an inalienable and indefeasible right to alter, reform, or abolish their form of government in such manner as they may think proper.

3. That all persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience, and no person can of right be compelled to attend, erect, or support any place of worship, or maintain any ministry, against his consent. That no human authority can in any case whatever interfere with the rights of conscience, and that no preference shall ever be given to any religious establishment or mode of worship.

4. That the civil rights, privileges, or capacities of a citizen shall in nowise be diminished or enlarged on account of his religion.

5. Thall all elections shall be free and equal.

6. That the right of trial by jury shall remain inviolate.

7. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right.

8. The people shall be secure in their persons, houses, papers, and possessions from unreasonable seizures and searches, and no warrant to search any place, or to seize any person or thing, shall issue without probable cause, supported by oath or affirmation. In all criminal prosecutions the accused has a right to be heard by himself or counsel; to demand the nature and cause of the accusation, and have a copy thereof; to be confronted by the witness or witnesses against him; to have compulsory process for obtaining witnesses in his favor, and in all prosecutions by indictments or informations a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed. He shall not be compelled to give evidence against himself, nor shall he be deprived of his life, liberty, or property, but by due course of law.

9. That no freeman shall be taken or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty, or property, but by the judgment of his peers or the law of the land.

10. No person, for the same offence, shall twice be put in jeopardy of life, limb, or liberty, nor shall any person's property be taken or applied to the public use, unless compensation be made therefor.

11. That all penalties shall be reasonable, and proportionate to the nature of the offence.

12. No person shall be held to answer a capital or otherwise infamous crime, unless on the presentment or indictment of a grand jury, or by impeachment, except in cases of rebellion, insurrection, or invasion.

13. That no conviction shall work corruption of blood or forfeiture of estate.

14. That all prisoners shall be bailable by sufficient securities unless in capital offences, where the proof is evident or the presumption great, and the privileges of habeas corpus shall not be suspended unless when in the case of rebellion, insurrection, or invasion the public safety may require it.

15. That excessive bail shall in no case be required nor excessive fines imposed.

16. That no "*ex post facto*" law, nor any law impairing the obligations of contracts shall ever be made.

17. That forfeitures and monopolies are contrary to the genius of a republic, and shall not be allowed, nor shall any hereditary emolument, privileges or honors ever be granted or conferred in the State.

18. That the citizens have a right, in a peaceable manner, to assemble together for their common good; to instruct their representatives, and to apply to those entrusted with the power of government for redress of grievances or other purposes, by address or remonstrance.

19. That the citizens of this State shall have a right to keep and bear arms for their common defence.

20. That no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

21. The military shall be kept in strict subordination to the civil power.

22. Emigration to or from this State shall not be prohibited.

23. Free negroes shall not be permitted to live in this State under any circumstances.

24. This enumeration of rights shall not be construed to deny or disparage others retained by the people, and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher power herein delegated, we declare that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate, and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

SCHEDULE.

SECTION 1. That no inconvenience may arise by reason of a change from a territorial to a permanent State government, it is declared that all rights, actions, prosecutions, judgments, claims, and contracts, as well of individual as of bodies corporate, except the bill incorporating banks by the last territorial legislature, shall continue as if no such change had taken place, and all processes which may have issued under the authority of the Territory of Kansas shall be as valid as if issued in the name of the State of Kansas.

SEC. 2. All laws now of force in the Territory of Kansas which are not repugnant to this constitution, shall continue and be of force until altered, amended, or repealed, by a legislature assembled under the provisions of this constitution.

SEC. 3. All fines, penalties, and forfeitures, to the Territory of Kansas shall enure to the use of the State of Kansas.

SEC. 4. All recognizances heretofore taken shall pass to, and be prosecuted in, the name of the State of Kansas, and all bonds executed to the governor of the Territory, or to any other officer of the court in his or their official capacity, shall pass to the governor and corresponding officers of the State authority and their successors in office, and for the use therein expressed, and may be sued for and recovered accordingly; and all the estates or property, real, personal, or mixed, and all judgments, bonds, specialities, choses in action, and claims or debts of whatever description, of the Territory of Kansas, shall enure to, and rest in, the State of Kansas, and be sued for and recovered in the same manner, and to the same extent, as the same could have been by the Territory of Kansas.

SEC. 5. All criminal prosecutions and penal actions which may have arisen before the change from a territorial to a State government, and which shall then be pending, shall be prosecuted to judgment in the name of the State of Kansas. All actions at law and suits in equity which may be pending in the courts of the Territory of Kansas, at the time of a change from a territorial to a State government, may be

continued and transferred to any court of the State which shall have jurisdiction of the subject matter thereof.

SEC. 6. All officers, civil and military, holding their offices under authority of the Territory of Kansas, shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the State.

SEC. 7. This constitution shall be submitted to the Congress of the United States at its next ensuing session, and as soon as official information has been received that is is approved by the same, by the admission of the State of Kansas, as one of the sovereign States of the United States, this president of this convention shall issue his proclamation to convene the State legislature at the seat of government, within thirty-one days after publication. Should any vacancy occur, by death, resignation, or otherwise, in the legislature, or other office, he shall order an election to fill such vacancy: *Provided*, however, in case of removal, absence or disability of the president of this convention to discharged the duties herein imposed on him, the President *pro tempore* of this convention shall perform said duties, and in case of absence, refusal, or disability of the president *pro tempore*, a committee consisting of seven, or a majority of them, shall discharge the duties required of the president of this convention.

Before this constitution shall be sent to Congress, asking for admission into the Union as a State, it shall be submitted to all the white male inhabitants of this Territory, for approval or disapproval, as follows: The president of this convention shall, by proclamation, declare that on the twenty-first day of December, one thousand eight hundred and fifty-seven, at the different election precincts now established by law, or which may be established as herein provided, in the Territory of Kansas, an election shall be held, over which shall preside three judges, or a majority of them, to be appointed as follows: The president of this convention shall appoint three commissioners in each county in the Territory, whose duty it shall be to appoint three judges of election in the several precincts of their respective counties, and to establish precincts for voting, and to cause polls to be opened, at such places as they may deem proper in their respective counties, at which election the constitution framed by this convention shall be submitted to all the white male inhabitants of the Territory of Kansas in the said Territory upon that day, and over the age of twenty-one years, for ratification or rejection, in the following manner and form: The voting shall be ballot. The judges of said election shall cause to be kept two poll books by two clerks, by them appointed. The ballots cast at said election shall be endorsed, "constitution with slavery" and "constitution with no slavery." One of said poll books shall be returned within eight days to the president of this convention, and the other shall be retained by the judges of election and kept open for inspection. The president, with two or more members of this convention, shall examine said polls books, and if it shall appear upon said examination that a majority of the legal votes cast at said election be in favor of the "constitution with slavery," he shall immediately have the same transmitted to Congress of the United States, as hereinbefore provided; but if, upon such examination of said poll books, it shall appear that a majority of the legal votes cast at said election be in

favor of the "constitution with no slavery," then the article providing for slavery shall be stricken from this constitution by the president of this convention, and slavery shall no longer exist in the State of Kansas, except that the right of property in slaves now in this Territory shall, in no manner, be interfered with, and shall have transmitted the constitution, so ratified, (to Congress the constitution, so ratified,) to the Congress of the United States, as hereinbefore provided. In case of the failure of the president of this convention to perform the duties imposed upon him in the foregoing section, by reason of death, resignation, or otherwise, the same duties shall devolve upon the president *pro tem.*

SEC. 8. There shall be a general election upon the first Monday in January, eighteen hundred and fifty-eight, to be conducted as the election provided for in the seventh section of this article, at which election there shall be chosen a governor, lieutenant governor, secretary of State, State treasurer and members of the legislature, and also a member of Congress.

SEC. 9. Any person offering to vote at the aforesaid election upon said constitution shall, if challenged, take an oath to support the Constitution of the United States, and to support this constitution, under the penalties of perjury under the territorial laws.

SEC. 10. All officers appointed to carry into execution the provisions of the foregoing sections shall, before entering upon their duties, be sworn to faithfully perform the duties of their offices, and in failure thereof be subject to the same charges and penalties as are provided in like cases under the territorial laws.

SEC. 11. The officers provided for in the preceding sections shall receive for their services the same compensation as given to officers performing similar duties under the territorial laws.

SEC. 12. The governor and all other officers shall enter upon the discharge of their respective duties as soon after the admission of the State of Kansas, as one of the independent and sovereign States of the Union, as may be convenient.

SEC. 13. Oaths of office may be administered by any judge, justice of the peace, or clerk of any court of record of the Territory or the State of Kansas, until legislature may otherwise direct.

SEC. 14. After the year one thousand eight hundred and sixty-four, whenever the legislature shall think it necessary to amend, alter, or change this constitution, they shall recommend to the electors at the next general election, two-thirds of the members of each house concurring to vote for or against calling a convention, and if it shall appear that a majority of all citizens of the State have voted for a convention, the legislature shall at its next regular session call a convention, to consist of as many members as there may be in the house of representatives at the time, to be chosen in the same manner, at the same places, and by the same electors that choose the representatives; said delegates so elected shall meet within three months after said election, for the purpose of revising, amending, or changing the constitution, but no alteration shall be made to affect the rights of property in the ownership of slaves.

SEC. 15. Until the legislature elected in accordance with the provisions of this constitution shall otherwise direct, the salary of the

governor shall be three thousand dollars, and the salary of lieutenant governor shall be double the pay of a State senator, and the pay of members of the legislature shall be five dollars per diem, until otherwise provided by the first legislature, which shall fix the salaries of all officers other than those elected by the people at first election.

SEC. 16. This constitution shall take effect and be in force from and after its ratification by the people, as hereinbefore provided.

Done in convention at Lecompton, in the Territory of Kansas, on the seventh day of November, in the year of our Lord one thousand eight hundred and fifty seven, and of the independence of the United States of America the eighty-second. In testimony whereof, we have hereunto subscribed our names.

Atchinson County.

Jun. T. Hereford.
Isaac S. Hascal.
Jas. Adkins.

Bourbon County.

H. T. Wilson.
B. Little.

Leavenworth County.

Jesse Cormell.
John Dale Henderson.
Hugh M. Moore.
Jarret Todd.
Wilburn Christison.
Samuel J. Kookogee.
Lucian J. Eastin.
Wm. Walker.
John W. Martin.
Green B. Redmon.

Brown and Nemeha Counties.

Cyrus Dolman.
Henry Smith.

Douglas County.

W. S. Wells.
Alfred W. Jones.
Owen C. Stewart.
L. S. Boling.
W. T. Spicely.
H. Butcher.

Lykins County.

Jacob T. Bradford.
Wm. A. Haskell.

Jefferson County.

Thos. D. Chiles.
Alexander Bayne.
Wm. H. Swift.

Johnson County.

G. W. McKown.
Batt Jones.
J. H. Danforth.

Marshall County.

Wm. H. Jenkins.

Riley County.

John S. Randolph.
C. K. Mobley.

Doniphan County.

Thos. J. Key.
Samuel P. Blair.
James J. Rennolds.
William Mathews.
D. Vanderslice.
Harvey W. Forman.

Linn County.

Milton E. Bryant.

Shawnee County.

Samuel G. Reed.
Rusk Elmore.

Calhoun County.

Henry D. Oden.

J. CALHOUN,
President of the convention and representative from the county of Douglas.
CHARLES J. McILVAINE,
Secretary of the convention.

The within is a true and perfect copy, as compared by me, of the constitution of the State of Kansas, prepared and submitted by the constitutional convention at Lecompton, on the seventh day of November A. D. 1857.

J. CALHOUN,
President constitutional convention.

LECOMPTON, K. T., *January* 14, 1858.

ORDINANCE.

Whereas, the government of the United States is the proprietor, or will become so, of all or most of the lands lying within the limits of Kansas, as determined under this constitution; and whereas the State of Kansas will possess the undoubted right to tax such lands for the support of her State government, or for other proper and legitimate purposes connected with her existence as a State: Now, therefore, be it ordained by this convention, on behalf of and by the authority of the people of Kansas, that the right aforesaid to tax such lands shall be, and is hereby, forever relinquished, if the conditions following shall be accepted and agreed to by the Congress of the United States.

SECTION 1. That sections numbered 8, 16, 24, and 36, in every township in the State, or in case either of said numbered sections are or shall be otherwise disposed of, that other lands, equal thereto in value and as contiguous as may be, shall be granted to the State to be applied exclusively to the support of common schools.

SEC. 2. That all salt springs, and gold, silver, copper, lead, or other valuable mines, together with the lands necessary for their full occupation and use, shall be granted to said State for the use and benefit of said State; and the same shall be used or disposed of under such terms and conditions and regulations as the legislature of said State shall direct.

SEC. 3. That five per centum of the proceeds of the sales of all public lands sold or held in trust or otherwise lying within the said State, whether sold before or after the admission of the State into the Union, after deducting all expenses incidental to the same, shall be paid to the said State of Kansas for the purpose following, to wit: two-fifths to be disbursed under the direction of the legislature of the State for

The undersigned, citizens of Westport, Missouri, and vicinity, and Kansas Territory, state that they are personally acquainted with Judge George Wilson, of Anderson county, Kansas Territory, and that he is a gentleman whose veracity cannot successfully be called in question.

Th. H. Rosser,	J. H. Danforth,
S. H. Smith,	A. G. Boone,
Wm. W. Morrow,	V. D. Boon,
G. W. McKown,	Chas. E. Kearny.

STATE OF MISSOURI, }
County of Jackson, town of Westport, and its additions. }

The undersigned, mayor of the said town and its additions, State and county, laid in the margin, hereby certifies that the persons whose names appear above are gentlemen of the first standing in this community as business men, and citizens of the highest respectability.

[L. S.] Given under my hand and official seal, at my office in said town, this the 6th day of February, 1858.

THOMAS J. GOFORTH,
Mayor of Town of Westport.

Statement of McKown and Danforth.

STATE OF MISSOURI, }
County of Jackson. }

Before H. Clay Pate, a notary public for Jackson county, Missouri, aforesaid, came George W. McKown and Joshua H. Danforth, ex-members of the Lecompton convention from Johnson county, Kansas Territory, who made the following statement under oath:

In regard to the matter of admitting to said convention the delegation from Anderson informally elected, I can say that the delegation sent in their petition by Judge Rush Elmore; the petition was referred to a special committee of five, Judge Elmore being chairman, and after examining thoroughly into the matter, by the aid of evidence and papers bearing on the affair, a majority of four reported favorably to their admission; but before any action by the convention was taken on the report, Judge Elmore, as attorney for the parties, withdrew their petition. The delegation from Franklin county were not rejected by a vote of the convention, but they withdrew their papers from the hands of the aforesaid committee.

J. H. DANFORTH.
G. W. McKOWN.

Subscribed and sworn to before me as aforesaid.

[L. S.] Given under my hand and official seal, at office, this the 6th day of February, 1858.

H. CLAY PATE, *Notary Public.*

[From the Kansas Crusader of Freedom.]

Another letter from Mr. Parrott.

WASHINGTON, *Monday, January*, 1858.

MY DEAR CAPTAIN: Your letter of the 4th has just reached me. We have news that our ticket is defeated. *It makes but little difference in the main chances of our cause.* The President has staked his *all* in the passing of the Lecompton constitution. I do not believe it can pass the House; others think it can. The law of the legislature for preventing frauds at elections does not seem to be *stringent* enough. What I advise is this, to make the penalty *death*. I do not want to go on the bench; but if anything could induce me to, it would be the satisfaction of sending some of these scoundrels to the scaffold they so richly deserve.

Yours,

MARK PARROTT.

Captain SAMUEL WALKER, *Lawrence*.

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Captain SAMUEL WALKER, *Lawrence.*

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1858.—Ordered to be printed.

Mr. DOUGLAS, from the Committee on Territories, submitted the following

MINORITY REPORT.

I am constrained to withhold my assent from the conclusion to which the majority of the committee have arrived, for the reason, among other things, that there is no satisfactory evidence that the constitution formed at Lecompton is the act and deed of the people of Kansas, or that it embodies their will. In the absence of all affirmative evidence that the Lecompton constitution does "meet the sense of the people to be affected by it," and in opposition to the overwhelming majority recorded against it at a fair and valid election held in pursuance of law on the 4th day of January, 1858, it is argued that the Lecompton convention was duly constituted with full authority to ordain a constitution and establish a government, and, consequently, the proceedings of that convention must be presumed to embody the popular will, although such presumption may be rebutted and overthrown by the most conclusive evidence to the contrary.

Inasmuch, then, as the right of Congress to accept the Lecompton constitution and impose it upon the people of Kansas, in opposition to their known wishes and recorded votes, rests solely upon the assumption that the proceedings were technically legal and regular, and that the regularity of the proceedings must be made to override the popular will, it becomes important to inquire whether the convention was duly constituted and clothed with full power to ordain a constitution and establish a State government, to the exclusion of the organic act and territorial government established by Congress.

It is conceded that, on the 19th day of February, 1857, the territorial legislature passed a law providing for the election of delegates to a convention to form a constitution and State government; and that the convention, when assembled in pursuance of said act, was vested with all the power which it was competent for the territorial legislature to confer, and which by the terms of the act was conferred on the convention, and no more. Did that territorial act have the legal effect to authorize the convention to abrogate or suspend the territorial government established by Congress, and substitute a State government in its place?

This committee, in their reports, have always held that a Territory is not a sovereign power; that the sovereignty of a Territory is in abeyance, suspended in the United States in trust for the people when

they become a State; that the United States, as the trustee, cannot be divested of the sovereignty, nor the Territory be invested with the right to assume and exercise it, without the consent of Congress. By the Kansas Nebraska act the people of the Territory were vested with all the rights and privilegesof self-government, on all rightful subjects of legislation, consistent with and in obedience to the organic act; but they were not authorized, at their own will and pleasure, to resolve themselves into a sovereign power, and to abrogate and annul the organic act and territorial government established by Congress, and to ordain a constitution and State government upon their ruins, without the consent of Congress.

It would seem, from his special message, that the President is under the impression that the Kansas-Nebraska act, from the date of its passage, on the 30th of May, 1854, when there were not five hundred white inhabitants in the whole country, authorized the people of those Territories, respectively, or "any portion of the same," at their own sovereign will and pleasure, "to proceed and form a constitution in their own way, without an express authority from Congress;" and to suspend the authority of the territorial legislature, at least to the extent of depriving it of the power to submit a constitution to the people for ratification or rejection before it should be deemed the act and deed of the people of Kansas. With the most profound respect for the opinions of the President, I must be pardoned for expressing my firm convictions that neither the provisions of that act, nor the history of the measure, nor the understanding of its authors and supporters at the time of its enactment, or at any period since, justifies or permits the construction which the President has placed upon it. It is certain that President Pierce, who signed and approved the Kansas-Nebraska act, and whose administration was a unit in support of the measure at the time of its enactment, did not understand that it authorized the people of each or either of those Terrritories "to proceed and form a constitution in their own way without an express authority from Congres," from the fact that on the 24th day of January, 1856, he sent a special message to Congress, in which he recommended an enabling act for Kansas as the appropriate legislative remedy for the evils complained of in that Territory. His recommendation is in these words:

"This, it seems to me, can be best accomplished by providing that, when the inhabitants of Kansas may desire it, and shall be of sufficient numbers to constitute a State, a convention of delegates, duly elected by the qualified voters, shall assemble to frame a constitution, and thus prepare, through regular and lawful means, for its admission into the Union as a State. *I respectfully recommend the enactment of a law to that effect.*

"I recommend, also, that a special appropriation be made to defray any expense which may become requisite in the execution of the laws or the maintenance of public order in the Territory of Kansas."

The message of President Pierce, containing this recommendation, was referred to the Committee on Territories by the Senate, and, after full examination and mature deliberation, this committee, on the 12th day of March, 1856, made an elaborate report in explanation and

vindication of the principles, provisions, and policy of the Kansas-Nebraska act, and arrived at the conclusion that "the recommendation of the President furnished the appropriate and legitimate mode of conducting the principles, provisions, and policy of the act to a successful and final consummation, by the passage of an act of Congress authorizing the people of Kansas to hold a convention and form a constitution and State government, when the inhabitants of Kansas may desire it, and shall be of sufficient numbers to constitute a State."

The committee, in their report, responded to the President's recommendation in the following language:

"In compliance with the first recommendation, your committee ask leave to report a bill, authorizing the legislature of the Territory to provide by law for the election of delegates by the people, and the assembling of a convention to form a constitution and State government, preparatory to their admission into the Union on an equal footing with the original States, as soon as it shall appear, by a census to be taken under the direction of the governor, by the authority of the legislature, that the Territory contains ninety-three thousand four hundred and twenty inhabitants, that being the number required by the present ratio of representation for a member of Congress."

Thus it appears that the committee who wrote and reported the Kansas-Nebraska bill, and the President who approved and imparted vitality to it by his signature, did not mean by that act to authorize or recognize the right of the people of a Territory, with a few hundred or even a few thousand population, whenever they pleased to form a constitution and State government, "without an express authority from Congress;" but, on the contrary, it clearly appears that the authors of the act understood, and intended it to be construed and executed as meaning, that while the people of those Territories remained in a territorial condition, they should exercise and enjoy all the rights and privileges of self-government, in conformity with the organic act, and that, when they should have the requisite number "to constitute a State," and should desire it, Congress would give its assent, in a subsequent act, to authorize them to form a constitution and State government, and to come into the Union on an equal footing with the original States in all respects whatever. President Pierce did not specify the number which he deemed necessary to constitute a State; nor did the Cincinnati convention, on the "celebrated occasion" referred to by the President in his annual message, designate the precise number which would entitle "the people of all the Territories, including Kansas and Nebraska," to "form a constitution with or without slavery, and be admitted into the Union upon terms of perfect equality with the other States;" but it is evident, from the language employed, that they did not understand the right of admission to have accrued from the date of the organization of each Territory, nor when there should be a few hundred or a few thousand inhabitants, nor at whatever time the people of the Territory should feel disposed to claim the privilege, without reference to numbers, but when, in the language of President Pierce, *they should "be of sufficient numbers to constitute a State;"* or, in the language of the Cincinnati platform, as appears in the extract copied into the annual message of the

President, "*whenever the number of their inhabitants justifies it;*" or, in the language of the Committee on Territories, in the report to which I have referred, so soon as it shall appear, by a census, "that the Territory contains ninety-three thousand four hundred and twenty inhabitants—*that being the number required by the present ratio of representation for a member of Congress.*" So it appears that each of these authorities (if I may be permitted to use such a term in this connexion) excludes the idea that a Territory may proceed to form a constitution and State government whenever it pleases without the consent of Congress, and irrespective of the number of its inhabitants, and sustains the position that a Territory is not entitled to admission, according to the principles of the Federal Constitution, until it contains population enough to constitute a State, and that it is the province of Congress, instead of the Territory, to determine what that number shall be. While the Constitution of the United States does not, in terms, prescribe the number of inhabitants requisite to form a State of the Union, yet, in view of the fact that representation in the House of Representatives is to be in the ratio of federal population, and that each State, no matter how small its population, is to be allowed one representatives, it is apparent that the rule most consistent with fairness and justice towards the other States, and in harmony with the general principles of the Federal Constitution, is that which, according to the ratio of population for the time being, is sufficient for a representative in Congress. A reference to the debates which have occurred in all the cases touching the sufficiency of population in the admission of a State will show tnat the discussion has always proceeded on the supposition that the rule I have indicated was the true one; and the effort has been, on the one side, to prove that the proposed State had sufficient population, and, on the other, that it had not the requisite numbers to entitle it to admission, in substantial compliance with that rule. In view of these facts, I respectfully but firmly insist that neither the principles nor the provisions of the Kansas-Nebraska act, nor of the Cincinnati platform, justifies the assertion that it was the intention to abrogate this wise and just rule, and establish in lieu of it the principle that "all the Territories, including Kansas and Nebraska," have a right, whenever they please, and with whatever population they may happen to possess, "to proceed and form a constitution, in their own way, without an express authority from Congress," and demand admission into the Union on the plea that the organic act was an enabling act. I do not insist that Congress, in the exercise of a sound discretion, may not depart from the rule to which I have referred, and make an exceptional case of a Territory under peculiar circumstances, as the Senate proposed and the House of Representatives refused to do with Kansas in July, 1856; but in such a case, if any can be shown in our history, it must be regarded as a concession by Congress, and not the recognition of a right in the Territory. That the Senate concurred with President Pierce and the Committee on Territories, that the Kansas-Nebraska act did not authorize the people of those Territories to proceed and form a State constitution, wnenever they chose, without the consent of Congress; and that the passage of an enabling act by Congress was the appro-

priate and legitimate mode of carrying into effect the principles, provisions, and policy of the Kansas-Nebraska act, when those Territories, respectively, should have the requisite population to entitle them to admission into the Union as States, according to the principles of the Federal Constitution, as guarantied by the treaty acquiring the country from France, is made apparent by the fact that on the 2d day of July, 1856, in pursuance of the said recommendation of the President and report of the committee, the Senate passed an enabling act for Kansas, entitled "*An act to authorize the people of the Territory of Kansas to form a constitution and State government, preparatory to their admission into the Union on an equal footing with the original States.*"

I quote from Senate Journal, page 414:

"*Ordered*, That the bill be engrossed, and read a third time.

"The said bill was read the third time.

"On the question, Shall the bill pass?

"It was determined in the affirmative: yeas 33; nays 12.

"On motion by Mr. Seward,

"The yeas and nays being desired by one-fifth of the senators present,

"Those who voted in the affirmative are—

"Messrs. Allen, Bayard, Bell of Tennessee, Benjamin, Biggs, Bigler, Bright, Brodhead, Brown, Cass, Clay, Crittenden, Douglas, Evans, Fitzpatrick, Geyer, Hunter, Iverson, Johnson, Jones of Iowa, Mallory, Pratt, Pugh, Reid, Sebastian, Slidell, Stuart, Thompson of Kentucky, Tombs, Toucey, Weller, Wright, Yulee.

"Those who voted in the negative are—

"Messrs. Bell of New Hampshire, Collamer, Dodge, Durkee, Fessenden, Foot, Foster, Hale, Seward, Trumbull, Wade, Wilson.

"So it was

"*Resolved*, That the bill pass, and that the title thereof be as aforesaid."

From this official record it appears that no senator voted against the enabling act for Kansas in 1856 who had either advocated or voted for the Kansas-Nebraska act in 1854. While it is proper to remark that those senators who did vote against this enabling act justified their opposition upon the ground that the provisions of the bill, and the time and circumstances under which it was proposed to press it, were not in accordance with their views of public policy and duty, and not upon the ground that the organic act was a sufficient enabling act to authorize the people of the Territory to ordain a constitution whenever they pleased. Greater significance and importance are imparted to these recommendations, reports, and votes in favor of an enabling act for Kansas, in view of the fact that, a few months previously, the territorial legislature had taken the preliminary step for calling the Lecompton convention, by ordering an election to be held a few months thereafter, for or against the convention; while the effect, as well as the design, of the enabling act thus recommended by the President and passed by the Senate would have been, if it had passed the House and become a law, to arrest and put an end to this irregular and unauthorized proceeding on the part of the territorial legislature, and to substitute in place of it a regular and legal

mode of proceeding under the authority of Congress. Had the enabling act become a law, whereby the people of Kansas would have been authorized to assume and exercise the sovereign power of establishing a constitution and State government, the proceeding would have been regular, lawful, and in strict conformity with the true intent and meaning of the Kansas-Nebraska act. Then the people of Kansas would have become a sovereign power, clothed with full authority to establish a constitution and State government in their own way, subject only to the Constitution of the United States. But if the proposition be true, that sovereign power alone can institute governments, and that the sovereignty of a Territory is in abeyance, suspended in the United States in trust for the people when they become a State, and the sovereignty cannot be divested from the hands of the trustee and vested in the people of the Territory without the assent of Congress, it follows as an unavoidable consequence that the Kansas legislature, by the act of February 19, 1856, did not, and could not, confer upon the Lecompton convention the sovereign power of ordaining a constitution for the people of Kansas in the place of the organic law passed by Congress. The convention seems to have been conscious of this absence of sovereign power on their part, and seeks to supply the deficiency by referring the constitution to the people at an election on the 21st of December last "*for ratification or rejection,*" with the further provision that "*this constitution shall take effect and be in force from and after its ratification by the people, as hereinbefore provided.*"

I will quote some of the provisions on this point:

"Before this constitution be sent to Congress, asking admission into the Union as a State, it shall be submitted to all the white male inhabitants of this Territory for approval or disapproval, as follows," &c.

And again:

"At which election the constitution formed by this convention shall be submitted to all the white male inhabitants of the Territory of Kansas in said Territory upon that day, and over the age of twenty-one years, for *ratification or rejection*, in the following manner and form," &c.

And further:

"SECTION 16. This constitution shall take effect and be in force from and after the ratification by the people, as hereinbefore provided."

From these provisions it is clear that the convention did not openly assert and exercise the authority to ordain and establish the constitution by virtue of any sovereign power vested in that body, but referred it to the people for ratification or rejection, under the supposition that the popular will expressed through the ballot-box might impart vitality and validity to it. But before the time arrived for holding the election on the ratification or rejection of the constitution, as provided by the convention, the territorial legislature interposed its authority by the passage of a law providing that said constitution should be submitted to the people for ratification or rejection at a fair election, to be held in conformity with the laws of the Terri-

tory, on the 4th day of January, 1858. The reasons for this legislative interposition, by which the vote on the constitution was in effect to be postponed from the 21st of December to the 4th of January, and then held and conducted and the returns made in the manner prescribed by law, may be deduced from the following facts:

1. That while the convention recognized the right of the people of Kansas to "*ratify*" or "*reject*" said constitution, and provided that it should not take effect, nor be submitted to Congress for acceptance, until so ratified at an election to be held for the purpose of "*ratification*" or "*rejection,*" yet the mode of submission prescribed by the convention was such as to render it impossible for the people to reject it at said election, even if there should be but one person offering to vote for it, and twenty thousand against; since no person was to be permitted to vote unless he would vote for the constitution, and those who should offer to vote against the constitution were to be excluded from the polls, and deprived of the privilege of voting at all at said election.

2. That the mode of submission prescribed by the convention did not fairly present the question to the people, to be decided at that election, whether Kansas should be a slaveholding or a non-slaveholding State, for the reason that while there was known to be many pro-slavery men residing in the Territory who were anxious to vote in favor of making Kansas a slaveholding State, but were at the same time irreconcilably opposed to that constitution; and while it was also known that there were many free-State men resident in the Territory who were equally opposed to the constitution, whether the slavery clause should be retained or excluded; yet the convention had provided, in effect, that no pro-slavery man should vote in favor of making Kansas a slaveholding State, unless he at the same time recorded his vote in favor of the constitution; nor should any free-State man vote in favor of making Kansas a free State, unless he at the same time would record his vote in favor of the constitution.

3. That, inasmuch as the convention did not possess any legislative power, it could not prescribe, and did not attempt to provide, any penalties or punishments for illegal and fraudulent voting, or for false and fraudulent returns, except by a vague and vain reference to the territorial laws.

4. That the schedule of the constitution had taken the whole management of said election out of the hands of the territorial officers, and placed it into the hands of commissioners, judges, and clerks, to be appointed by and under the authority of the president of the convention; and even if the territorial laws could be construed as applicable to the persons so appointed to conduct this election, yet fraudulent and spurious and forged returns could be made with impunity, as had been the case in other elections, for the reason that, by some singular omission or inadvertence, the election laws of the Territory failed to provide any penalties or punishment for such offences.

Do not these facts furnish sufficient reasons to justify the territorial legislature in interposing its authority, as it did on the 17th of December, in the passage of a law which, in effect, postponed the elec-

tion on the ratification or rejection of the constitution until the 4th of January, and provided that on that day a fair election should be held, at which every legal voter in the Territory might record his vote for or against the constitution, and for or against the slavery article, freely and unconditionally, and also made wise and effective provision to protect the ballot-box and returns from fraud and violence?

The result of the election of the 4th of January on the ratification or rejection of the Lecompton constitution was officially announced by the governor and presiding officers of the two houses of the legislature of the Territory, in the following proclamation:

"In accordance with the provisions of an act entitled 'An act submitting the constitution framed at Lecompton under the act of the legislative assembly of Kansas Territory, entitled An act to provide for taking a census and election of delegates to a convention,' passed February 19, A. D. 1857, the undersigned announce the following as the official vote of the people of Kansas Territory on the questions as therein submitted on the 4th day of January, 1858:

Counties.	Against the Lecompton constitution.	For the Lecompton constitution with slavery.	For the Lecompton constitution, without slavery
Leavenworth	1,997	10	3
Atchison	536	4	----
Doniphan	561	1	2
Brown	187	2	----
Nemaha	238	1	----
Marshall	66	----	----
Riley	287	7	----
Pottawatomie	207	2	----
Calhoun	249	----	----
Jefferson	377	1	----
Johnson	392	2	----
Lykins	358	1	1
Linn	510	1	3
Bourbon	268	55	----
Douglas	1,647	21	2
Franklin	304	----	----
Anderson	177	----	----
Allen	191	1	4
Shawnee	832	28	3
Coffee	463	----	4
Woodson	50	----	----
Richardson	177	----	1
Breckinridge	191	----	----
Madison	40	----	----
Davis	21	----	----
Total	10,226	138	24

"Some precincts have not yet sent in their returns, but the above is the complete vote received to this date.

"J. W. DENVER,
"*Secretary and Acting Governor.*
"C. W. BABCOCK,
"*President of the Council.*
"G. W. DEITZLER,
"*Speaker of the House of Representatives.*

"JANUARY 26, 1858."

From this official proclamation, it appears that the Lecompton constitution was repudiated and rejected by the people of Kansas at that election by a clear majority of ten thousand and sixty-four (10,064) votes.

It is proper, however, to remark, that, notwithstanding the legislature had provided by law that the vote on the ratification or rejection of the constitution should take place on the 4th day of January, the friends of that instrument, in disregard of the law, held an election on the 21st of December, under the pretended authority of the convention; and that it appears from a proclamation signed by C. W. Babcock, president of the council, and by G. W. Deitzler, speaker of the house of representatives of the Territory, who were present by invitation of John Calhoun, president of the convention, at the counting of the votes, that six thousand one hundred and forty-three (6,143) votes were returned for "the constitution with slavery," and that five hundred and eighty-nine (589) votes were returned for "the constitution with no slavery," showing a majority of five thousand five hundred and seventy-four (5,574) votes cast at that election for "the constitution with slavery," as presented to Congress for adoption.

It is also stated in the same proclamation that "more than one-half of this majority was cast at those very sparsely settled precincts in the Territory, two of them in the Shawnee reserve, on land not open for settlement, viz:

"Oxford, Johnson county	1,266
"Shawnee, Johnson county	729
"Kickapoo, Leavenworth county	1,017
"Total	3,012

"From our personal knowledge of the settlements in and around the above places, we have no hesitation in saying that the great bulk of these votes were fraudulent; and taking into view the other palpable but less important frauds, we feel safe in saying, that of the whole vote polled, not over two thousand were legal votes polled by the citizens of the Territory."

But assuming this election to have been fair and valid, although not held and conducted according to law, and assuming the returns to have been genuine, and the voters to have been all citizens of the Territory, notwithstanding the recent developments of the enormous frauds at the polls and in the returns—assuming all this, let us see

how the matter stands when we compare the result of the two elections:

At the election on the 4th of January, the majority against the constitution was	10,064
At the election on the 21st of December, the majority in favor of the constitution, as presented to Congress, was	5,574
Showing a clear majority against the constitution, on comparison of the returns of the two elections, and supposing each to have been fair and legal, of	4,490

If, from this calculation, we deduct the fraudulent votes, according to the statement of the presiding officers of the two houses of the legislature, who were present at the opening of the polls and the counting of the votes, by the invitation of the president of the convention, and we have a majority of more than eight thousand, or four to one of all the legal voters of Kansas in opposition to the constitution.

The manner in which the advocates of the Lecompton constitution hope to avoid the force of this overwhelming verdict against it by the people of Kansas is explained in the following passage from the recent special message of the President of the United States, which contains all that he says upon the subject:

"It is proper that I should briefly refer to the election held under an act of the territorial legislature, on the first Monday of January last, on the Lecompton constitution. This election was held after the Territory had been prepared for admission into the Union as a sovereign State, and when no authority existed in the territorial legislature which could possibly destroy its existence or change its character. The election, which was peaceably conducted under my instructions, involved a strange inconsistency. A large majority of the persons who voted against the Lecompton constitution were, at the very same time and place, recognizing its valid existence in the most solemn and authentic manner, by voting under its provisions. I have yet received no official information of the result of this election."

It is to be regretted that, on the 2d day of February, the President had received no official information of the result of the election held on the 4th day of January, which were published in the "proclamation" to which I have referred, and were republished in the newspapers of this city and of New York as early as the 30th of January, from which proclamation the President would have learned, if he had received it, that the people of Kansas had repudiated and rejected the Lecompton constitution by more than ten thousand majority at that election. It seems, however, that the President attaches no importance to this overwhelming vote of the people against the constitution, for the reason that he supposes "this election was held after the Territory had been prepared for admission into the Union as a sovereign State, and when no authority existed in the territorial legislature which could possibly destroy its existence or change its character." By what authority had the Territory been prepared for admission into the Union? Certainly not by the authority of Congress, for I have

already shown that Congress withheld its assent when asked by President Pierce, in a special message, to grant it. Was it by authority of the territorial legislature? It is a peculiar doctrine that a territorial legislature may assemble a convention without the assent of Congress, and empower the convention, when assembled, to abrogate or impair the authority of the territorial government established by Congress, of which the legislature is a constituent part. This question does not now arise for the first time in the history of our country. It arose under the administration of General Jackson, on the right of the territorial legislature of Arkansas "to prepare that territory for admission into the Union as a sovereign State, without any express authority from Congress;" and, after mature deliberation, General Jackson delivered the decision of his administration upon the proposition, through Mr. Butler, his Attorney General. I quote from the opinion:

"To suppose that the legislative powers granted to the general assembly include the authority to abrogate, alter, or modify the territorial government established by the act of Congress, and of which the assembly is a constituent part, would be manifestly absurd. The act of Congress, so far as it is consistent with the Constitution of the United States and with the treaty by which the Territory, as a part of Louisiana, was ceded to the United States, is the supreme law of the Territory; it is paramount to the power of the territorial legislature, and can only be revoked or altered by the authority from which it emanated. The general assembly and the people of the Territory are as much bound by its provisions, and as incapable of abrogating them, as the legislatures and people of the American States are bound by and incapable of abrogating the Constitution of the United States. It is also a maxim of universal law, that when a particular thing is prohibited by law, all means, attempts, or contrivances to effect such thing are also prohibited. Consequently, it is not in the power of the general assembly of Arkansas to pass any law for the purpose of electing members to a convention to form a constitution and State government, nor to do any other act, directly or indirectly, to create such new government. Every such law, even though it were approved by the governor of the Territory, would be null and void; if passed by them, notwithstanding his veto, by a vote of two-thirds of each branch, it would still be equally void."

Thus it appears that, under the administration of General Jackson, the doctrine obtained—and I have never heard its correctness questioned until the present session of Congress—that a convention assembled under the authority of a territorial legislature, "without an express authority from Congress," had no right or power to prepare the Territory for admission into the Union as a sovereign State, and thereby abrogate or impair the authority of the territorial legislature over all rightful subjects of legislation consistent with the organic act. If this view of the subject be correct, it follows, necessarily, that the Lecompton convention, in forming the constitution, did not by that act, and could not by any act, impair, diminish, or restrain the authority of the territorial legislature; and hence, that the constitution formed at Lecompton, and presented to Congress for acceptance, should

be considered and treated like any other memorial or petition, which Congress may accept or reject, or disregard, according to the facts and circumstances of the case. This point was also considered and decided by General Jackson's administration in the Arkansas case, as appears by the following extract from the same opinion of Attorney General Butler:

"But I am not prepared to say that all proceedings on this subject, on the part of the citizens of Arkansas, will be illegal. They undoubtedly possess the ordinary privileges and immunities of citizens of the United States. Among these is the right of the people 'peaceably to assemble and to petition the government for the redress of grievances.' In the exercise of this right, the inhabitants of Arkansas may peaceably meet together in primary assemblies, or in conventions chosen by such assemblies, for the purpose of petitioning Congress to abrogate the territorial government, and to admit them into the Union as an independent State. The particular form which they may give to their petition cannot be material, so long as they confine themselves to the mere right of petitioning, and conduct all their proceedings in a peaceable manner. And as the power of Congress over the whole subject is plenary and unlimited, they may accept any constitution, however framed, which, in their judgment, *meets the sense of the people to be affected by it.* If, therefore, the citizens of Arkansas think proper to accompany their petition by a written constitution, framed and agreed on by their primary assemblies, or by a convention of delegates chosen by such assemblies, I perceive no legal objection to their power to do so, nor to any measures which may be taken to collect the sense of the people in respect to it: provided, always, that such measures be commenced and prosecuted in a peaceable manner, *in strict subordination to the existing territorial government, and in entire subserviency to the power of Congress to adopt, reject, or disregard them at their pleasure.*

"It is, however, very obvious that all measures commenced and prosecuted with a design to subvert the territorial government, and to establish and put in force in its place a new government, without the consent of Congress, will be unlawful. The laws establishing the territorial government must continue in force until abrogated by Congress; and, in the meantime, it will be the duty of the governor, and of all the territorial officers, as well as of the President, to take care that they are faithfully executed."

If we apply the principles to Kansas which received the sanction of General Jackson and his administration in the Arkansas case, it becomes apparent that the Lecompton convention had the right to assemble under the protection of that clause of the Constitution of the United States which secures to the people the right "peaceably to assemble, and to petition government for the redress of grievances;" and, in the exercise of this right of petition, they might pray "Congress to abrogate the territorial government, and to admit them into the Union as an independent State," provided "they confine themselves to the mere right of petitioning, and the constitution enclosed in their petition *meets the sense of the people to be affected by it,*" and also that "such measures be commenced and prosecuted in a peaceable manner, in *strict subor-*

dination to the existing territorial government, and in *entire subserviency to the power of Congress to adopt, reject, or disregard them at their pleasure;*" but that said convention could not establish a government, or ordain a constitution, or do any other act, under pretense of "preparing the Territory for admission into the Union as a sovereign State," calculated or intended to abrogate, impair, or restrain the legislative power of the Territory over all rightful subjects of legislation consistent with the organic act. If these principles be sound—if the doctrine of General Jackson's administration in the Arkansas case be correct, the President is mistaken in supposing that the Lecompton convention did, or could do, any act depriving the territorial legislature of the power and right to pass a law referring the constitution to a vote of the people on the 4th of January, with the view of ascertaining the essential and all-important fact whether it "*meets the sense of the people to be affected by it.*" The power of the territorial legislature over the whole subject was as full and absolute on the 17th day of December, when the law was enacted providing for the submission of the constitution to the people at the election on the 4th of January, as it was on the 19th day of February, 1857, when the legislature passed the act calling the Lecompton convention into existence. The convention was the creature of the territorial legislature, was called into existence by its mandate, derived whatever power it possessed from its enactment, and was bound to conduct all its proceedings "*in strict subordination to the existing territorial government,*" as well as "in entire subserviency to the power of Congress to adopt, reject, or disregard them at their pleasure." Such being the case, whenever the legislature ascertained that the convention, whose existence depended upon its will, had devised a scheme to force a constitution upon the people without their consent, and without any authority from Congress, and which was believed to be repugnant to the feelings and hostile to the interests of the people to be affected by it, it became their imperative duty to interpose and exert the authority conferred upon them by Congress in the organic act, and arrest and prevent the consummation of the scheme before it had gone into operation. The legislature deserves credit for the promptness, wisdom, and justice which characterized its proceeding in this respect. The members were familiar with the wishes of the people, having been elected after the Lecompton convention assembled, and before it concluded its labors, and at the end of an exciting canvass, in which the origin and organization of the convention, the circumstances under which the delegates were elected, and their pledge to submit the constitution to the people for ratification or rejection, and the various provisions which were to be incorporated into the constitution, were all fully and freely discussed by both parties before the people. The legislature not only passed the act of the 17th of December authorizing the people to vote for or against the constitution before it should be sent to Congress for acceptance, but, in order to prevent any action by Congress before the people should have an opportunity of making their wishes known in an authoritative and legal form, the following preamble and resolutions were adopted, as published in the public prints, by the unanimous vote of the two houses:

"*Preamble and joint resolutions in relation to the constitution framed at Lecompton, Kansas Territory, on the 7th day of November*, 1857.

"Whereas a small minority of the people living in nineteen of the thirty eight counties of this Territory availed themselves of a law which enabled them to obstruct and defeat a fair expression of the popular will, did, by the odious and oppressive application of the provisions and partisan machinery of said law, procure the return of the whole number of the delegates of the constitutional convention recently assembled at Lecompton:

"And whereas, by reason of the defective provisions of said law, in connexion with the neglect and misconduct of the authorities charged with the execution of, the same, the people living within the remaining nineteen counties of the Territory were not permitted to return delegates to said convention, were not recognized in its organization, or in any other sense heard or felt in its deliberations:

"And whereas it is an axiom in political ethics that the people cannot be deprived of their rights by the negligence or misconduct of public officers:

"And whereas a minority—to wit: twenty-eight only of the sixty members of said convention—have attempted, by an unworthy contrivance, to impose upon the whole people of this Territory a constitution without consulting their wishes, and against their will:

"And whereas the members of said convention have refused to submit their action for the approval or disapproval of the voters of the Territory, and in thus acting have defied the known will of nine-tenths of the voters thereof:

"And whereas the action of a fragment of said convention, representing as they did a small minority of the voters of the Territory, repudiates and crushes out the distinctive principle of the 'Nebraska-Kansas act,' and violates and tramples under foot the rights and the sovereignty of the people:

"And whereas, from the foregoing statement of facts, it clearly appears that the people have not been left 'free to form and regulate their domestic institutions in their own way,' but, on the contrary, at every stage in the anomalous proceedings recited, they have been prevented from so doing:

"*Be it therefore resolved by the governor and legislative assembly of Kansas Territory*, That the people of Kansas being opposed to said constitution, Congress has no rightful power under it to admit said Territory into the Union as a State, and the representatives of said people do hereby, in their name and on their behalf, solemnly protest against such admission.

"*Resolved*, That such action on the part of Congress would, in the judgment of the members of this legislative assembly, be an entire abandonment of the doctrine of non-intervention in the affairs of the Territory, and a substitution in its stead of congressional intervention in behalf of a minority engaged in a disreputable attempt to defeat the will and violate the rights of the majority.

"*Resolved*, That the people of Kansas Territory claim the right,

through a legal and fair expression of the will of a majority of her citizens, to *form* and *adopt* a constitution for themselves.

"*Resolved*, That the governor of this Territory be requested to forward a copy of the foregoing preamble and resolutions to the President of the United States, the President of the Senate, the Speaker of the House of Representatives, and to the delegate in Congress from the Territory."

In the face of all these evidences that the Lecompton constitution is not the act of the people of Kansas, and does not embody their will; that it was formed by a convention elected under an act of the territorial legislature, without the consent of Congress; that the sixty delegates composing the convention were chosen by nineteen of the thirty-eight counties in the Territory, while the other nineteen counties were entirely disfranchised, without any fault of their own, by the failure or refusal of the officers, whose duty it was, under the law, to take a census and register the voters in order to entitle them to vote for delegates; that the mode of submission to the people for "ratification or rejection," as prescribed by the convention, was such as to render it impossible for the people to reject it, for it allowed no person to vote who would not vote for the constitution, and excluded from the polls all persons who desired to vote against it; that the only reason assigned or believed to exist for not allowing the people to vote *against* the constitution, as well as for it, is, that a large majority of the people were known to be opposed to it, and would have rejected it by an overwhelming majority, if they had been allowed an opportunity; that the mode of submitting the "slavery article" was such that no man was permitted to vote *for* making Kansas a slave State unless he would vote for the constitution at the same time, nor was any man permitted to vote *against* making Kansas a slave State unless he would also vote *for* the constitution; that by this system of trickery in the mode of submission a large majority, probably amounting to four-fifths of all the legal voters of Kansas, were disfranchised and excluded from the polls on the 21st of December; that in order to prevent the injustice and wrong intended to be perpetrated by the trickery resorted to in this mode of submission, and to secure in place of it a fair and honest election, the legislature, on the 17th of December, passed a law providing for such an election on the 4th day of January, at which the whole people should have an opportunity, freely and unconditionally, to vote for or against the constitution, and for or against the slavery article, as they pleased; that, at said election, a majority of more than ten thousand of the legal voters of Kansas repudiated and rejected the Lecompton constitution; that the election on the 4th of January was lawful and valid, having been fairly and honestly conducted, under and in pursuance of a valid law, which the President was not only bound to respect, but to see faithfully executed, the same as all other territorial laws which are not inconsistent with the Constitution of the United States and the organic act of the Territory; that the election on the 21st of December was not valid and binding on the people of the Territory, for the reason that it was not held in pursuance of any law of the Territory or of the United States, nor under the authority of any body of men duly authorized to make laws;—I repeat, that in

the face of all these facts, showing conclusively that the Lecompton constitution is not the act and deed of the people of Kansas, and does not embody their will, we are told by the President of the United States that "to the people Kansas the only practical difference between admission or rejection depends simply upon the fact whether they can themselves more speedily change the present constitution, if it does not accord with the will of the majority, or frame a second constitution, to be submitted to Congress hereafter."

There is a "practical difference" far more important than the mere question of time, and there are principles involved infinitely more important than the practical difference.

There is a serious difference in practice as well as in principle, whether the people of Kansas shall be permitted to make and adopt the constitution under which they are to live, and with which they are to be received voluntarily into the Union, or whether Congress will force them into the Union against their will, and with a constitution which they have repudiated by an overwhelming majority of their votes at a fair election held in pursuance of law, and then maintain it by federal bayonets.

If it be true, as represented by the President, that "ever since the period of my (his) inauguration, a large portion of the people of Kansas have been in a state of rebellion against the (territorial) government;" that "they have never acknowledged, but have constantly renounced and defied the government to which they owe allegiance, and have been all the time in a state of resistance against its authority;" that "they would long since have subverted it, had it not been protected from their assaults by the troops of the United States;" that Governor Walker "considered at least two thousand troops, under the command of General Harney, were necessary for this purpose;" and that "I (the President) have been obliged, in some degree, to interfere with the expedition to Utah, in order to keep down rebellion in Kansas;"—I repeat, that if these statements be a fair and impartial representation of the character, feelings, and purposes of the people of Kansas, does it follow, as a logical and natural consequence from these premises, that "the speedy admission of Kansas into the Union" with a constitution to which they are unalterably opposed, and which they have repudiated by an overwhelming majority of their voters at a fair election held in pursuance of law, "would restore peace and quiet to the whole country;" that "domestic peace will be the happy consequence of its admission," and that "I (the President) shall then be enabled to withdraw the troops of the United States from Kansas, and employ them on other branches of service where they are much needed?" If it be true, as alleged, that "a large portion of the people of Kansas are in a state of rebellion against the government," and that the rebels so far outnumber the law-abiding citizens that they would "long since have subverted the territorial government, had it not been protected from their assaults by the troops of the United States;" and that "they have all the time been endeavoring to subvert it, and to establish a revolutionary government" in its place; and that "up till this moment the enemies of the existing government still adhere to their revolutionary plans

and purposes with treasonable pertinacity;"—if these allegations, so gravely set forth by the President in his special message, be true, do they furnish satisfactory evidence to authorize the belief or even grounds for hope that "the speedy admission of Kansas into the Union," with the Lecompton constitution, "would restore peace and quiet to the whole country," and that "domestic peace will be the happy consequence of its admission?"

It is to be lamented that the President does not seem to comprehend the nature and character of the controversies which have so unhappily disturbed the peace and marred the prosperity of Kansas, and the grounds upon which they claimed to be justified in the course they have pursued. During the whole period from the 30th of March, 1855, when the first annual election was held for members of the legislature and other officers in that Territory, until the general election on the first Monday of October, 1857, the free-State party, so called, did boldly, firmly, and persistently refuse to recognize the territorial legislature of Kansas as a legally and duly constituted legislative body, with authority to pass laws which were valid and binding on the people of Kansas, for the reason, as they alleged, that the members of that legislature were not elected by the people of Kansas, but were elected by four or five thousand citizens of the adjoining State of Missouri, who are said to have invaded the Territory on the day and a few days previous to the day of election, and, dividing themselves into small parties, and spreading over all the inhabited parts of the Territory, took possession of the polls and drove away the peaceable legal voters, and thus forced a legislature upon the people of Kansas against their will, and in violation of the Kansas-Nebraska act.

These are the allegations and grounds of justification urged by the free-State party in Kansas during the period to which I have referred. It is no part of my present purpose to inquire how far these allegations are sustained by the facts, nor what number of the election districts were controlled by these illegal votes, nor the principles of law applicable to the facts, or the legal conclusions properly resulting from them. These questions were all fully considered and elaborately discussed by me in a report from this committee on the 12th of March, 1856. I refer to them now, not for the purpose of re-opening that discussion, or of changing the conclusions to which I then arrived, but with the view of showing upon what grounds the free-State party claimed that they were justified in withholding their allegiance to the territorial government until a fair opportunity was afforded the people of the Territory to elect their own legislature, in pursuance of the organic law; and that from the day on which the members elected, in October, assembled and organized as a legislative body, all the opponents of the Lecompton constitution have recognized the territorial government as valid and legitimate, acknowledging their allegiance to it, and their determination and duty to sustain and support it. The October election becomes a memorable period in the history of Kansas, for the additional reason that it marks the date when the Lecomptonites changed their whole line of policy, and formed the scheme of forcing the constitution on the people without their consent, and of subverting

the authority of the territorial legislature without the consent of Congress. Up to this period it had been generally understood and conceded that the convention had been called for the purpose of framing a constitution and submitting it to the people for ratification or rejection, and of sending it to Congress for acceptance, only in the event it should be first ratified by a majority of all the legal voters of the Territory. Upon this point there is no room for doubt that the President and his cabinet concurred with the people of Kansas, that it was the duty of the convention to submit the constitution to the people fairly and unconditionally, for ratification or rejection, before it could be considered the act and deed of the people of Kansas, and that its ratification by the people must be a condition precedent to the admission of Kansas into the Union by Congress. The President, in his instructions to Governor Walker, through his Secretary of State, under date of March 30, said:

"When such constitution shall be submitted to the people of the Territory, they must be protected in the exercise of *their right of voting* FOR OR AGAINST *that instrument*, and the fair expression of the popular will must not be interrupted by fraud or violence."

Governor Walker, in an official despatch to the Secretary of State, under date of June 2, said: "On one point the sentiment of the people is almost unanimous—that the constitution must be submitted for ratification or rejection to a vote of the people who shall be *bona fide* residents of the Territory next fall." And in his inaugural address to the people of Kansas, Governor Walker said:

"With these views, *well known to the President and cabinet*, and APPROVED BY THEM, I accepted the appointment of governor of Kansas. My instructions from the President, through the Secretary of State, under date of 30th of March last, sustain the 'regular legislature of the Territory in assembling a convention to form a constitution,' and they express the opinion of the President, that when such constitution shall be submitted to the people of the Territory, they must be protected in the exercise of their right of voting for or against that instrument; and the fair expression of the popular will must not be interrupted by fraud or violence."

"*I repeat, then, as my clear conviction, that, unless the convention submit the constitution to the vote of all the actual resident settlers of Kansas, and the election be fairly and quietly conducted, the* CONSTITUTION WILL BE AND OUGHT TO BE REJECTED BY CONGRESS."

These official papers, containing the most solemn and unequivocal assurances on the part of the President, the cabinet, and the governor, that the constitution would be submitted to the people for "*ratification* or *rejection*," and that in the event it should not be submitted, it "*will and ought to be rejected by Congress*," were published and spread broadcast over the Territory, prior to the election of delegates to the convention, for the purpose of satisfying the people that although they had been unjustly and foully treated in the apportionment of delegates by the total disfranchisement of nineteen counties, and the imperfect and unfair registration of voters in the other nineteen counties, yet this great wrong would not produce any injury in the end, for the reason that the convention was compelled to submit the constitution to the people for "ratification or rejection," and that unless it

should be thus submitted at a fair election "*the constitution will be and ought to be rejected by Congress.*"

The people, relying on these solemn pledges of the President, the cabinet, and the governor, supported by the constant assurances of all the government officers in the Territory, and affirmed by the democratic party, unanimously, in their resolutions endorsing the policy of Governor Walker, and nominating Governor Ransom for Congress, and confirmed by senators and representatives in Congress who visited the Territory, and gave similar pledges in their speeches to the people, were lulled into a false and fatal security, under the belief that the great wrong perpetrated in the apportionment for the election of delegates would be corrected and rendered harmless by the submission of the constitution to a vote of the people at a fair election for ratification or rejection. Thus the matter stood when the election took place on the first Monday of October last, and resulted in the total defeat of the democratic party, and the triumph and election of free-State men for the legislature, for Congress, and for county officers. This election dissipated the last ray of hope on the part of the pro-slavery men of making Kansas a slaveholding State by a fair vote of the people on the ratification or rejection of the constitution, for the obvious reason that, while it was conceded that the whole of the free-State party (so called) would vote to a man against a pro-slavery constitution, it was well known that at least one-half of the democratic party would vote the same way on that question, thus proving by the data furnished by that election that four-fifths, if not nine-tenths, of the people were in favor of making Kansas a free State. The Lecompton convention assembled and organized on the first Monday in September, one month previous to the election, and, after appointing the committee and transacting some preliminary business, adjourned until after the election for the purpose of avoiding a division in the democratic party by disclosing the character of the constitution until they should ascertain the relative strength of parties in the Territory. The result of the election demonstrated, beyond all controversy, that an immense majority of the people of Kansas were opposed to making Kansas a slave State, and that if the convention framed and presented a slave State constitution for approval or disapproval, it would inevitably be rejected at the election.

Under these circumstances, the convention determined that, instead of conforming their action to the known wishes of the people of Kansas, they would form a slave State constitution, and submit it to the people in such a form as to render it impossible for them to reject it, by allowing those to vote only who would vote *for* it, and excluding from the polls all who proposed to vote against it. By this disreputable trick they hope to save themselves, the President and his cabinet, and all who co-operated with them, from the disgrace of violated pledges at the same time that they defrauded the people of Kansas of the sacred rights of self-government guarantied by the organic act, by forcing a constitution upon them without their consent and against their wishes. It is but just to remark, that the moment this scheme of trickery and fraud was promulgated, a large majority of the democratic party, including the better portion of the pro-slavery party, who had acted with the Lecomptonites up to that time, instantly withdrew

their confidence and support, and denounced the measure as a base betrayal of the rights of the people. The Lecomptonites were loyal to the territorial government so long as they filled the offices and controlled its power; but the moment they were defeated at the election, and the power passed into the hands of their opponents, they rebelled against it, defied its authority, and devised schemes to destroy its existence. Thus they provided: "This constitution shall take effect and be in force from and after its ratification by the people, as hereinbefore provided;" that is, from and after the election on the 21st of December, when the people were permitted to vote for it, but not against it. In this mode they proposed to abrogate and subvert the territorial government established by Congress, by putting in force a State constitution without the consent of Congress. What is this but rebellion—open, naked, undisguised rebellion? Where is the difference between this and the Topeka movement, which the President denounces as "revolutionary government," organized in defiance of the authority of the United States, which it was his duty to suppress with the federal troops? He says: "*This Topeka government, adhered to with such treasonable pertinacity, is a government in direct opposition to the existing government prescribed and recognized by Congress.*" Might not the President have said, with as much fairness and justice, that "this Lecompton constitution, adhered to with such treasonable pertinacity, is a constitution in direct opposition to the existing government prescribed and recognized by Congress?" If it be said that the Topeka constitution was framed and declared to be in force without the consent of Congress, and, therefore, "revolutionary," it may be answered, with equal truth, that the Lecompton constitution was framed and declared in force without the consent of Congress, and, consequently, "revolutionary" for the same reason. But we are told that the Lecompton convention assembled under the authority of the territorial legislature. It is true that it commenced its proceedings under the sanction of the legislature, and terminated its action in open rebellion against the authority of the legislature. When the legislature, on the 17th of December, interposed its lawful authority to prevent the Lecompton constitution from going into effect until ratified by the people on the 4th of January, and accepted by Congress, the Lecomptonites defied the authority of the legislature established by Congress, and treated the law with contempt, refusing to yield obedience to it, or respect its mandates, or abide by the decision under it.

Thus it will be seen that, from the time the Lecomptonites lost possession of the offices under the territorial government by a fair election on the first Monday in October last, in the language of the President, "they have all the time been endeavoring to subvert it, and establish a revolutionary government under the so-called Topeka (Lecompton) constitution in its stead. So it appears that the Lecompton constitution, as well as the Topeka constitution, was declared to "take effect and be in force," not only without the consent of Congress, but in defiance and contempt of the authority of the territorial legislature established by Congress. Hence, if it be true that the Topeka constitution was revolutionary, (and I have always held that it was so,) for the reason that it was declared to take effect and be in

force without the consent of Congress, and in defiance of the authority of the territorial legislature, it is undeniable that the Lecompton constitution was "revolutionary" for the same reason, and that the President of the United States was under the same official obligation to maintain the supremacy of the territorial law over the Lecompton constitution as he was over the Topeka constitution until Congress should otherwise order and direct. Upon what principles of fairness or justice, then, can it be urged that we should admit Kansas into the Union with the Lecompton constitution? Certainly not upon the ground that it is the act and deed of the people of Kansas, and fairly embodies their will, for it has been conclusively shown that it has been repudiated by the people by more than 10,000 majority at a fair election held in pursuance of a valid law. Not upon the ground that it was adopted "in strict subordination to the existing territorial government, and in entire subserviency to the power of Congress to adopt, reject, or disregard it at their pleasure," as was held by General Jackson in the Arkansas case to be necessary; for it has been shown, beyond all controversy, that it was declared to "take effect and be in force" in defiance of the authority of the territorial legislature, and without the consent of Congress. But the speedy admission of Kansas is urged by the President as "a question of mere expediency," in order to "restore peace and quiet to the whole country," and prevent "a revival of the slavery agitation." Upon this point the President addresses a plausible and ingenious argument to that portion of the anti-slavery feeling of the country, which, overlooking the great principle of self-government involved, opposes the Lecompton constitution mainly upon the ground that it recognizes and establishes slavery in Kansas, and is willing to adopt the shortest and quickest mode of abolishing slavery and making Kansas a free State. In order to reconcile this anti-slavery feeling to the admission of Kansas under the Lecompton constitution, the President presents and enforces, by argument, the following propositions:

1st. That "it has been solemnly adjudicated by the highest judicial tribunal known to our laws, that slavery exists in Kansas by virtue of the Constitution of the United States, and that Kansas is therefore, at this moment, as much a slave State as Georgia or South Carolina."

2d. That "slavery can, therefore, never be prohibited in Kansas, except by means of a constitutional provision, and in no other manner can this be done so promptly, if a majority of the people desire it, as by admitting it into the Union under the present constitution."

3d. That "the people will then be sovereign, and can regulate their own affairs in their own way. If a majority of them desire to abolish domestic slavery within the State, there is no other possible mode by which this can be effected so speedily as by prompt admission;" and that "the legislature already elected may, at its very first session, submit the question to a vote of the people, whether they will or will not have a convention to amend their constitution, and adopt all necessary means for giving effect to the popular will."

4th. Inasmuch as the Lecompton constitution provides a mode of amendment after the year 1864, and thereby excludes the possibility of any lawful change until that period, the President suggests that Congress may remove this obstacle, by inserting a clause in the act of

admission annulling so much of the constitution as prohibits any change until after the year 1864, and requires two-thirds of each house of the legislature to authorize the people to vote for a convention, and declaring the right of the legislature already elected to call a convention, by a majority vote, in violation of the constitution under which its members were elected, and which they were sworn to support. Let us read the President's language on this point:

"If, therefore, the provision changing the Kansas constitution, after the year one thousand eight hundred and sixty-four, could forcibly be construed into a prohibition to make such a change previous to that period, this prohibition would be wholly unavailing; and again: If a majority of them (the people of Kansas) desire to abolish domestic slavery within the State, there is no other possible mode by which this can be effected so speedily as by prompt admission. The will of the majority is supreme and irresistible when expressed in an orderly and lawful manner. They can make and unmake constitutions at pleasure It would be absurd to say they can impose fetters on their own power which they cannot afterwards remove. If they could do this, they might tie their own hands for a hundred as well as for ten years. These are fundamental principles of American freedom, and are recognized, I believe, in some form or other, by every State constitution; and *if Congress, in the act of admission, should think proper to recognize them, I can perceive no objection to such a course.*"

The President can perceive no objection to Congress inserting a provision in the act admitting Kansas into the Union, which abrogates and annuls an imperative provision of the constitution, and declares the right of the legislature already elected to take the initiatory steps to change it by a majority vote, in the face of the provision in the constitution that such steps shall not be taken unless *two-thirds of the members of such house* concur, and not even in that case until after the year 1864. What right has Congress to intervene and annul, alter, or even construe the provisions of a State constitution, and license the members of the legislature to disregard their sworn obligations to support the constitution under which they hold their offices? Where does Congress obtain its authority to tell the members of a State legislature that they are under no obligation to respect and obey the constitution with which such State was admitted into the Union, and that they may proceed to alter or abrogate it in a mode and at a time different from that authorized or permitted in the instrument? If the Lecompton constitution be the act and deed of the people of Kansas; and if it be accepted by Congress as such, and the State be admitted into the Union under it, I hold that there is no *lawful* mode on earth to change or amend it, except the one provided and authorized in the constitution itself. I agree that "the will of the majority is supreme and irresistible when expressed in an orderly and lawful manner." But the question is, when a constitution has once become the supreme law of a State, what "lawful manner" is there of changing it, except the one provided and permitted by the constitution? I agree with the President, also, that "the people can make and unmake constitutions at pleasure." But how—in what manner is this to be done? There are two modes—the one *lawful*, and the other *revolutionary*. When a constitution has once become the fundamental law of a State, there is no

"lawful manner," there can be no lawful manner of altering, changing, or abrogating it, except in pursuance of its provisions. It is true that the right of *revolution* remains—that great inalienable right to which our fathers resorted when submission was intolerable, and resistance a less evil than submission.

Hence, if the Lecompton constitution be accepted by Congress and the State admitted under it, while there will be no "lawful manner" of amending or abrogating it until after the year 1864, and then only by the concurrence of two-thirds of each branch of the legislature, in the first instance, followed by a majority vote of all the citizens of the State, and the concurrence of the two houses of the next legislature, all prior to the election of delegates and the assembling of a convention; yet the revolutionary right will remain to the people of Kansas, to be resorted to or not, according as they shall determine for themselves that it is a less evil to resist than to submit to a convention which was never their act and deed, and never did embody their will. It may be true that, under this terrible right of revolution, "if a majority of the people desire to abolish domestic slavery in the State, there is no other possible mode by which this can be effected so speedily as by prompt admission;" but if this "mode" be resorted to under the impression that it will abolish slavery in Kansas more "speedily" than any other possible mode, it must be understood to mean revolution if successful, and rebellion in case of failure. But suppose the line of policy indicated by the President should be pursued; that Kansas be admitted under the Lecompton constitution; that Congress, in the act of admission, recognize the right of "the legislature already elected at its very first session to submit the question to a vote of the people, whether they will or will not have a convention to amend their constitution, and adopt all necessary measures to give effect to the popular will;"—suppose all this to have been done, of what relief will it be to the oppressed people of Kansas, unless Mr. Calhoun shall set aside the fraudulent returns from Delaware Crossing, or go behind the returns and reject the fraudulent votes at Kickapoo, Shawnee, or Oxford, or at other precincts, in order to insure a majority in both branches of the legislature opposed to the Lecompton constitution, and in favor of an immediate change?

Unless the President is prepared to inform us that this is to be done, it is worse than mockery to talk about the right of the legislature, "at its very first session," to submit the question to the people, and to insert a void clause in the act of admission declaratory of a right which can be exercised only in violation of the constitution, and by revolution; and especially if it is understood that, by forged returns and fraudulent votes, a majority of members are to be declared elected in both branches of the legislature who are determined to maintain the Lecompton constitution, and resist any and all efforts to change it. By the express command of the constitution, the returns of that election were to be made to the president of the convention "within eight days" after the election. On the ninth day after the election—to wit: on the 13th day of January—the returns were opened and counted by Mr. Calhoun, as appears by the proclamation of the presiding officers of the two houses of the legislature, who were present, by his

invitation, to witness the opening and counting of the votes. More than a month has elapsed since the returns were opened and votes counted, and Mr. Calhoun being in this city, we are not permitted to know the result of his deliberations; whether the rumors of yesterday that the anti-Lecompton members were elected, or the rumor of to-day that the Lecompton party have triumphed, or whether the policy is to withhold the decision until the State shall have been admitted, and, leaving each party to infer that the decision is in their favor, compel Congress to act in the dark, and wait patiently to find out the result of its action. But suppose there should be a majority in both houses of the legislature opposed to the Lecompton constitution and in favor of a change, what can they do towards relieving the people of Kansas from a constitution they abhor, since it is well understood that, in consequence of a large number of votes cast for the anti-Lecompton ticket having been returned to Governor Denver instead of Mr. Calhoun, the Lecompton ticket for governor and State officers is to be declared elected, thus rendering it morally certain that any bill which the legislature might pass, having for its object a change in the constitution, would be defeated by the governor's veto, it not being anticipated in any contingency that the opponents of the Lecompton constitution would have a majority of two-thirds in each branch of the legislature? Hence, it must be apparent to all that, in the event that Kansas is admitted under the Lecompton constitution, every argument or proposition founded on the idea that the people of Kansas will have the opportunity of changing the constitution by peaceful means through the instrumentality of the legislature, must, in all probability, prove deceptive and delusive. In the event that the deed shall be consummated, their only alternative will be submission or revolution. Revolutions are, sometimes, peaceful and bloodless. Constitutions and governments have been changed by revolution without violence or bloodshed; but this is the case only where the public sentiment in favor of the change is unanimous, or approaches so closely to unanimity as to silence all opposition. If this should prove to be the case in Kansas, the people will be able to reassert their violated rights of self-government and form a constitution which will embody their will, without violence or force; but if, in the progress of the revolution, they should meet with determined resistance, civil war or unconditional submission must be the inevitable consequence.

Does the history of this Lecompton constitution, and the character and purposes of the men engaged in the movement, and the means employed to force it upon an unwilling people, furnish an assurance that, after they have realized all their hopes by making the constitution the fundamental law of the State, unalterable until after 1864, and then except by a two-thirds vote, they will, on the day they come into power under it, permit it to be subverted and abrogated by a revolutionary movement, when they will have acquired the right, under the Constitution of the United States, to demand of the President the use of the federal army to put down the insurrection, and protect the State "against domestic violence?"

When this demand shall be made upon the President by the "legislature already elected, at its very first session," or by the governor,

"when the legislature cannot be convened," will he not consider himself bound by his official oath, and in obedience to the Constitution of the United States, to use the federal troops to protect the State against domestic violence, by putting down the revolution, and suppressing insurrection, and maintaining the authority of the constitution, until lawfully changed in the manner prescribed in the instrument? Or, if it could be converted into a judicial, instead of a political question, and brought before the Supreme Court of the United States for adjudication, can any one doubt the decision? Would not the court be compelled to decide that the constitution, having once become the fundamental law of the State, must be respected and obeyed as such until changed or annulled, in pursuance of its own provisions?

Would not the court be compelled to declare, as an invariable and universal rule of interpretation, that when a constitution prescribes one mode of amendment it must be understood and construed as having thereby precluded all other modes, and prohibited all other means of accomplishing the same object? Suppose the people of Kansas should attempt to change the constitution in a mode and at a time different from that authorized in the instrument, and should proceed so far as to adopt a new constitution, and set up a State government under it by an overwhelming majority, in antagonism to the constitution and State government with which Kansas was admitted into the Union, which of these State governments would the President feel bound to recognize and "protect against domestic violence," when applied to in the manner provided in the Federal Constitution? Would he not be compelled to use the whole military power of the United States, or so much of it as shall be necessary, to put down the rebellion and "protect the State against domestic violence," when properly applied to for that purpose? Hence the question will arise, and it is important to know how it is to be decided, in the event there shall be two State governments in Kansas, in antagonism with each other—the one organized under the Lecompton constitution, and the other established by the people in opposition to the Lecompton constitution—which will the President recognize as valid and legitimate, and which will he denounce as a "revolutionary government, adhered to with such treasonable pertinacity" as to make it his duty, under the Constitution of the United States, to put down the insurrection and crush out the rebellion with the federal troops? It is important that this question should be determined, in order that the people of Kansas may know how they are to exercise that great indefeasible right of which the President speaks, when he says, "they can make and unmake constitutions at pleasure."

Does he mean that inalienable right of revolution to which every people may resort when their oppression is intolerable, and submission is a less evil than resistance? If so, I fear that the bright anticipations of the President would not be fully realized when he imagines that the speedy admission of Kansas into the Union under the Lecompton constitution "would restore peace and quiet to the whole country," and enable him "to withdraw the troops of the United States from Kansas, and employ them on branches of the service where they are much needed."

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1858.—Ordered to be printed.

Mr. COLLAMER, from the Committee on Territories, submitted the following as the

VIEWS OF THE MINORITY

On the Constitution of Kansas adopted by the convention which met at Lecompton on Monday, the 4th of September, 1857.

Congress has passed laws in relation to slavery in the Territories at all periods of its existence. When the territory was held by grant or treaty that in no way affected slavery, and where such an institution existed, if at all, to a very limited extent, there Congress entirely prohibited it. If slavery existed, and especially if the territory was holden by a title or treaty which forbade abolition, there slavery was suffered to continue; but even there Congress often adopted measures to prevent or to check further additions, and often, and before 1820, the taking of slaves into a territory for sale was forbidden.

It is most observable, however, that in no case was the condition of a Territory, as to slavery, ever left to be a matter of contention to the people therein. It was regarded as a question of too much interest to the whole country to be left to local legislation. At no period in our history has it ever, by any party, been insisted that the people were not at liberty to arrange this matter, like all others, in their own way, in the formation or alteration of their State constitution. In all the Territories north of the Ohio slavery was utterly forbidden by Congress from time to time, as they were formed, and in pursuance of the ordinance of 1787. In Mississippi, in 1798, Congress prohibited the importation of slaves, which they could not do in the States until 1808. This was direct intervention. In 1804, in Orleans Territory, (Louisiana,) Congress adopted three express provisions on slavery. Slaves were forbidden to be brought in, except with the owner's family, to settle. They were not to be imported from beyond the United States; and none were to be taken there, in any manner, if imported after 1798. For breach of either of these provisions the slaves were declared free. This was plenary intervention.

In 1820 was passed the Missouri compromise, by which Missouri was admitted as a slave State, and all slavery was forever forbidden north of 36° 30′ in the country ceded to us by France. This was done by the southern vote by a large majority, with a small minority of the North, and so a southern measure. This settled the condition

of all the territory we then owned, and was the bond of peace on the subject for more than one-third of a century. When Texas was acquired the same provision, by a line on 36° 30′, was made for peace.

When, by arrangement with Great Britain, we obtained the exclusive right to Oregon, it was formed into a Territory, and slavery utterly prohibited. After our acquisition by the treaty of peace with Mexico, difficulty and trouble on this subject was renewed. In 1850 this was arranged by the admission of California as a free State, and forming New Mexico and Utah into Territories, with the right, when forming State constitutions, at the proper time, to be admitted either with or without slavery, as such constitution should provide. This was also a southern measure; and it, together with the former measures then in force, again settled the condition of all our territory as to slavery. It was claimed and sustained as a *finality* of this subject.

In 1854 a measure was adopted, at the claim of the slaveholding States, by which, in effect, both and all the settlements were broken up, and the whole policy of the government on this subject changed. The country south of 36° 30′—Missouri, Arkansas, Louisiana, and Florida—obtained from Spain, had been made into slave States; but the country north of that line was mostly unsettled, Iowa only having been formed therefrom. The Kansas-Nebraska act was passed, the Missouri compromise line declared inoperative, and the subject of slavery was professedly turned over to the people who should go and inhabit that country. This was an invitation to all men to enter this field of competition for free or slave institutions; and it was to be expected that the friends and promoters of these two systems would make vigorous exertions in the struggle, and that settlement, by friends of each, would be highly stimulated by all *lawful* means. Hence associations and societies have been put in operation, both north and south, to promote such settlement by their respective friends. This was, however, neither unlawful nor censurable. That provision of the Kansas act is as follows:

"The eighth section of the act preparatory to the admission of Missouri into the Union (which, being inconsistent with the *principle* of non-intervention by Congress with slavery in the States and Territories, as required by the legislation of 1850, commonly called the compromise measure) is hereby declared inoperative and void, it being the true intent and meaning of this act not to legislate slavery into said Territory, or to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States: *Provided*, That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of March 6, 1820, either protecting, establishing, prohibiting, or abolishing slavery."

Without now inquiring into the propriety, expediency, or moral justice of this law, clear it is that it contains the plighted public faith of this nation that the people of Kansas shall have the right of self-government consistent with the Constitution.

Plighted public faith and just laws, however, secure no rights to men. That is found only in the just and fair execution of such laws;

and we will now briefly inquire how that has been done in relation to that people. Have they been permitted to exercise their promised freedom, even in the initiation of the government provided for them?

The governor of Kansas having, in pursuance of law, divided the Territory into districts, and procured a census thereof, issued his proclamation for the election of a legislative assembly therein, to take place on the 30th day of March, 1855, and directed how the same should be conducted, and the returns made to him, agreeable to the law establishing said Territory. On the day of election, large bodies of armed men from the State of Missouri appeared at the polls in most of the districts, and, by most violent and tumultuous carriage and demeanor, overawed the defenceless inhabitants, and by their own votes elected a large majority of the members of both houses of said assembly. On the returns of said election being made to the governor, protests and objections were made to him in relation to a part of said districts; and as to them, he set aside such, and such only, as by the returns appeared to be bad. In relation to others, covering, in all, a majority of the two houses, equally vicious in fact, but apparently good by formal returns, the inhabitants thereof, borne down by said violence and intimidation, scattered and discouraged, and laboring under apprehensions of personal violence, refrained and desisted from presenting any protest to the governor in relation thereto; and he, then uninformed in relation thereto, issued certificates to the members who appeared by said formal returns to have been elected.

In relation to those districts which the governor so set aside, orders were by him issued for new elections. In one of these districts the same proceedings were repeated by men from Missouri, and in others not, and certificates were issued to the persons elected.

This legislative assembly, so elected, assembled at Pawnee on the 2d day of July, 1855, that being the time and place for holding said meeting, as fixed by the governor, by authority of law. On assembling, the said houses proceeded to set aside and reject those members so elected on said second election, except in the district where the men from Missouri had, at said election, chosen the same persons they had elected at the said first election, and they admitted all of the said first-elected members.

A legislative assembly, so created by military force, by a foreign invasion, in violation of the organic law, was but a usurpation. No act of its own, no act or neglect of the governor, could legalize or sanctify it. Its own decisions as to its own legality are, like its laws, but the fruits of its own usurpation, which no governor could legitimate.

That territorial legislature passed the following law:

"SEC. 11. If any person print, write, introduce into, publish or circulate, or cause to be brought into, printed, written, published or circulated, or shall knowingly aid or assist in bringing into, printing, publishing or circulating within this Territory, any book, paper, pamphlet, magazine, hand-bill or circular, containing any statements, arguments, opinions, sentiments, doctrines, advice or innuendo, calculated to promote a disorderly, dangerous or rebellious disaffection

among the slaves in this Territory, or to induce such slaves to escape from the service of their masters or to resist their authority, he shall be guilty of a felony, and be punished by imprisonment and hard labor for a term not less than five years.

"SEC. 12. If any free person, by speaking or by writing, assert or maintain that persons have not the right to hold slaves in this Territory, or shall introduce into this Territory, print, publish, write, circulate, or caused to be introduced into this Territory, written, printed, published or circulated in this Territory, any book, paper, magazine, pamphlet or circular, containing any denial of the right of persons to hold slaves in this Territory, such person shall be deemed guilty of felony, and punished by imprisonment at hard labor for a term of not less than two years." And further providing, that no person "conscientiously opposed to holding slaves" shall sit as a juror in the trial of any cause founded on a breach of the foregoing law. They further provided, that all officers and attorneys should be sworn not only to support the Constitution of the United States, but also to support and sustain the organic law of the Territory, and the fugitive slave laws; and that any person offering to vote shall be presumed to be entitled to vote until the contrary is shown; and if any one, when required, shall refuse to take oath to sustain the fugitive slave laws, he shall not be permitted to vote. Although they passed a law that none but an inhabitant, who had paid a tax, should vote, yet they required no *time of residence* necessary, and provided for the immediate payment of a poll-tax; so providing, in effect, that on the eve of an election the people of a neighboring State could come in, in unlimited numbers, and, by taking up a residence of a day or an hour, pay a poll-tax, and thus become legal voters, and then, after voting, return to their own State. They thus, in practical effect, provided for the people of Missouri to control elections at their pleasure, and permitted such only of the real inhabitants of the Territory to vote as are friendly to the holding of slaves.

They permitted no election of any of the officers in the Territory to be made by the people thereof, but created the offices and filled them, or appointed officers to fill them for long periods, and provided that the next annual election should be holden in October, 1856, and the assembly to meet in January, 1857; so that none of these laws could be changed until the lower house might be changed, in 1856; but the council, which is elected for two years, could not be changed so as to allow a change of the laws or officers until the session of 1858, however much the inhabitants of the Territory might desire it.

These laws, made by an assembly created by a foreign force, are but a manifestation of the spirit of oppression which was the parent of the whole transaction.

They were obviously made to oppress and drive out all who were inclined to the exclusion of slavery; and if they remained, to silence them on this subject, and subject them to the will and control of the people of Missouri. These are the laws which the President says must be enforced by the army and whole power of this nation.

The people of Kansas, thus invaded, subdued, oppressed, and insulted, seeing their territorial government (such only in form) per-

verted into an engine to crush them in the dust, and to defeat and destroy the professed object of their organic law, by depriving them of the "*perfect freedom*" therein provided; and finding no ground to hope for rights in that organization, they proceeded, under the guarantee of the United States Constitution, "peaceably to assemble to petition the government for the redress of (their) grievances." They saw no earthly source of relief but in the formation of a State government by the people, and the acceptance and ratification thereof by Congress.

It is true that in several instances in our political history the people of a Territory have been authorized by an act of Congress to form a State constitution, and, after so doing, were admitted by Congress. It is quite obvious that no such authority could be given by the act of the territorial government. *That* clearly has no power to create another government paramount to itself. It is equally true that, in numerous instances in our history, the people of a Territory have, without any previous act of Congress, proceeded to call a convention of the people by their delegates; have formed a State constitution, which has been adopted by the people, and a State legislature assembled under it, and chosen senators to Congress, and then have presented said constitution to Congress, who has approved the same, and received the senators and members of Congress who were chosen under it before Congress had approved the same. Such was the case of Tennessee; such was the case of Michigan, where the people not only formed a State constitution without an act of Congress, and without any act of the territorial government, but they also put the State government into full operation and superseded the territorial government, and it was approved by Congress by receiving it as a State.

This was then sustained in the Senate by the present President Buchanan, who there declared that any act of the territorial legislature for the calling a convention to form a constitution, would be an act of usurpation.

The people of Florida formed their constitution, without any act of Congress therefor, six years before they were admitted into the Union. When the people of Arkansas were about forming a State constitution without a previous act of Congress, in 1835, the territorial governor applied to the President on the subject, who referred the matter to the Attorney General, and his opinion, as then expressed and published, contained the following:

"It is not in the power of the general assembly of Arkansas to pass any law for the purpose of electing members to a convention to form a constitution and State government, nor to do any other act, directly or indirectly, to create such government. Every such law, even though it were approved by the governor of the Territory, would be null and void; if passed by them, notwithstanding his veto, by a vote of two-thirds of each branch, it would still be equally void."

He further decided that it was not rebellious or insurrectionary, or even unlawful, for the people peaceably to proceed, even without an act of Congress, in forming a constitution, and that the so forming a State constitution, and so far organizing under the same as to choose the officers necessary for its representation in Congress, with a view

to present the same to Congress for admission, was a power which fell clearly within the right of the people to assemble and petition for redress. The people of Arkansas proceeded without an act of Congress, and were received into the Union accordingly. If any rights were derived to the people of Arkansas from the terms of the French treaty of cession, they equally extended to the people of Kansas, it being a part of the same cession.

In this view of the subject the people assembled at Topeka, in said Territory, by delegates chosen in the several counties, in public meetings assembled for that purpose, in September, 1855, who formed a constitution which was submitted to the people for their ratification or rejection, and which was duly ratified by a large majority of all who thought proper to vote, being, as we believe, a majority of all the voters then in the Territory.

Under that constitution an election of a governor and legislature was made, and officers appointed, and an organization made, for the purpose of petitioning Congress for admission to the Union; and a memorial was made and presented to Congress, with said constitution, for that purpose.

That memorial or petition for the admission of Kansas as a State under the Topeka constitution, formed as before stated, and so presented to Congress, though agreed to by the House of Representatives, was rejected by the Senate. The investigation, the evidence, and the facts as to the invasion and subjugation of Kansas at the March election of 1855, as presented by the committee of the House of Representatives, appointed for such investigations, fully discloses its enormity and outrage, as before stated, and shows that the invasion extended to every election district but one, yet the Senate entirely refrained from investigation, and all redress for that people failed.

No provision was made to correct the wrong, and they were left to suffer under the oppression of the tyrannical laws, and usurped power of the unscrupulous minority which force and fraud had there installed in official position, with the power and army of the United States pledged to sustain them. Thus ended the session of Congress in the summer of 1856. In that summer this usurped power in Kansas was exercised over the people there in the same spirit in which it originated, and, as manifested in the laws before mentioned, to drive the free-State people from the Territory, and prevent their emigration thereto. Aided by the people in Missouri, who had first subjugated the Territory, and by others like-minded, under pretended color of the laws so made, freedom of speech was crushed, printing presses were destroyed, and pillage, conflagration, and murder spread over the land. Every attempt at self-defence by the free-State people was pronounced "*constructive treason*," and large numbers were long imprisoned and guarded by United States troops therefor.

Many of the people were compelled to flee, and the Missouri river, the usual means of access to the Territory, was blockaded, and emigrants prevented from proceeding. Thus closed the gloomy autumn of 1856, and during the succeeding winter a large part of the people were dependent for their necessary supplies on the charitable contributions of the people of distant States. In October, 1856, a

territorial election for members of its House of Representatives occurred; but persecuted, scattered, and imprisoned, and the oppression of the tyrannical statutes of test oaths and gag laws continuing, entirely deprived the free-State people from any participation therein, and so the usurpation continued.

The people who had formed the Topeka constitution for presentation to Congress, and which they presented to Congress, not despairing of the justice of their country, and yet hoping that Congress might accept it, continued from time to time their provisional organization under the same, in order again to present the same, and the same has again been submitted to the people for ratification, and all invited to participate therein; and the same was again ratified by the majority of all who thought proper to vote in August, 1857. But no government under the same has ever, in any respect, been attempted to be put in operation, or the same in any manner been asserted against the existing officers of the United States or its laws, including that establishing Kansas Territory. It was, and ever has been, preliminary and provisional, subject to the action of Congress. It is indeed true that a large part, and probably a large majority, of that people were attached to that constitution, which they have repeatedly requested Congress to accept, but that they have ever attempted, in any act or spirit of rebellion, forcibly to put in operation a government under it, is entirely untrue; although individual wishes or ultimate purposes to such an end, on some possible contingencies, have, at times, been expressed. It is, however, true that the people have ever regarded the acts of the territorial legislation, so usurped as aforesaid, as utterly without legal force, and have not held themselves bound in obedience thereto; and the same have been in effect generally inoperative in the Territory, except so far as enforced by United States troops.

In February, 1857, the territorial legislature passed a law for the election of a convention to form a constitution for Kansas, as a State, with a view to apply to Congress for admission. This was done without any act of Congress for that purpose, Congress having recently refused to pass such a law, though recommended by the President; and the proceeding was, therefore, though not unlawful, in no way authoritative, and its result entitled to the consideration of Congress only so far as it was sanctioned by the votes and expressed the free will of the people of the Territory, or a majority thereof, in a full election fairly conducted. Such a result could not be ascertained but by subjecting the constitution to the full and unconditional vote of the whole people, for ratification or rejection. This is more especially true when conflicting opinions on the subject are well known to exist, as was the case with this Territory. A large part of the people, and, from what subsequently occurred, it is apparent a large majority of the people, did not participate in the election of these delegates; and a sufficient reason for that course was found in these considerations:

1st. The supervision and returns of the election was in power of men appointed by a legislature in whose election a large part of the people never participated, in whom, for this cause, and from the manner in which they conducted elections, they had no confidence.

2d. The United States officers there, the governor and secretary, had no control over these judges of the election.

3d. The territorial legislature, in directing the election of delegates to the convention, had provided for the taking a census for the apportionment of delegates, and making a voting list in the several counties. This was, by accident or design, very imperfectly done in any county, and in almost one-half of the counties, some of which were among the most populous in the Territory, it was entirely neglected, and, therefore, a large part of the people were entirely prevented from acting.

4th. The people were often, repeatedly, and officially assured by the governor and secretary, whom they regard as the organs of the general government, that the constitution, when formed, must be and should be submitted unconditionally to the whole actual resident people for their ratification or rejection. Under these circumstances, relying on these official assurances, they awaited quietly that day, and promised opportunity to exercise their acknowledged inalienable right to vote on their own State constitution. The result has shown this was an unreliable security, for the constitution, as formed by the convention, was by them never so submitted to the people, but in the conditional and deceptive manner hereafter described. The convention, so elected, met in September, 1857, at Lecompton, and adjourned until after the territorial election of a legislature in October, 1857.

The mass of the people of that Territory have always placed confidence in the fidelity and integrity of the governors whom the President has appointed whenever the same have been long enough in the Territory, from personal acquaintance with its people and condition, to become disabused of the delusion in relation to them which seems to be entertained and cherished with so much pertinacity by the dominant power in Washington. When Governor Walker and Acting Governor Stanton had personally and clearly ascertained—as Governor Reeder and Governor Geary had done before them—that the great body of the people, including most of its worthy and reliable inhabitants of both political parties, truly regarded themselves as oppressed and domineered over by a small and unscrupulous minority, inaugurated by violence and perpetuated by fraud, backed and supported by United States dragoons, and that this great body of the people had, with long forbearance, waited for a fair opportunity peaceably, at the ballot-box, to manifest their opinions and their strength and reclaim their rights, then it was that they honestly resolved to endeavor to give to that people such an opportunity, as far as they were able. They proceeded industriously and faithfully to exhort the people to participate in the election of a territorial legislature in October, 1857, not under the territorial acts but under the laws of Congress, and gave the most authoritative assurances of freedom and fairness. That people knew, indeed, that the supervision and control of the election was in the hands of officers never appointed by them or the governor and not under their control, and that they were subject to being outvoted by voters, by such officers admitted to vote, from Missouri, or by the insertion of fictitious votes, or by false returns. Unwilling, however, to be longer taunted from abroad with the charge of cowardly or fac-

tious inaction, and relying on the assurances of the governor and their own well known superiority of numbers, they generally concluded to proceed to the polls and attempt once more to exercise their rights under the laws of Congress. And what does the result disclose? It shows that, notwithstanding many declined to vote, lest thereby they should impliedly recognize as lawful the existing usurpation, over 11,000 votes were cast and a free-State legislature elected. In the next place, the result showed that all the apprehensions of that people as to fraudulent voting and returns, under the auspices of these judges of the elections, were well founded. We are well informed by Governor Walker and Secretary Stanton that votes to the amount of 1,600 in one case, and over 1,000 in another, came certified from precincts where, from personal examination, they found a limited population of but a few hundred. A large part of these votes were obviously fictitious; and those returns were set aside, being informally certified. Had not this been done by the governor, the original usurpation would again have been renewed and perpetuated by fraud.

The result of this election was regarded by all candid men there as settling the condition of Kansas, and, accordingly, when the convention assembled at Lecompton, on its adjournment, it was difficult to obtain even a bare majority to constitute a quorum. A majority of this quorum, but not of whole elected delegates, proceeded, with the spirit of desperation to defeat and evade the well known and clearly expressed will of the people, and by ingenious devices and cunning forms to fasten upon them a State constitution abhorrent to their feelings, and at the same time redeem, in a delusive form only, the pledges which had been given that it should be submitted to the people. In order to evade and frustrate the will of that people thus impose upon them a constitution against their consent, five, apparently certain legal securities, were to be evaded or demolished. 1st. The constitution with slavery must not be submitted to the people in any such way that a majority could reject it; and yet it must be submitted to them to redeem pledges and keep up appearances of fairness. 2d. The conduct of Governor Walker having shown that he would not prostitute his official duty by aiding in the success of fictitious votes and illegal returns, a course must be taken to avoid any use of his official action. 3d. The use of the legal officers for conducting the elections and making returns must be avoided, as they might be subjected to penalties if guilty of fraud, and possibly the new territorial legislature might make appointment of honest men. 4th. In order to supersede the legislature, so recently elected by the people, and restore power to the usurpation it had overcome, it was necessary so to make the apportionment of representatives, under the proposed State government, as to overcome the actual free-State majority, now well known to exist, and keep the supervision of the election out of their hands. 5th. To so arrange it as to render any action of the new legislature unavailable, and to perpetuate the laws which the long continued usurpation had adopted.

To effect these purposes the convention addressed themselves with unscrupulous ingenuity, and whether with success, it remains for Congress to determine.

They framed a constitution establishing slavery in two forms: first, for perpetuating in slavery all slaves then in the Territory and their progeny, and prohibiting abolition. Second, allowing their unlimited introduction with their owners, for settlement. They then provided for submitting this constitution to the people, professedly for their approval or *rejection* on the 21st day of December, 1857; but in this form only, that they might vote "the constitution with slavery," or "the constitution with no slavery." If the former had a majority the whole constitution was adopted; if the latter had a majority it rejected only that clause allowing the further importation of slaves. They were not allowed to vote against the constitution; so it was to be adopted, however objectionable, and to be a slave holding State in any event. In this manner the *first* object was to be effected.

They provided that the election was to be conducted and returns made by men appointed by the president of the convention (Calhoun) after the convention had closed, and therefore he out of office, and the returns to be made to him. Thus was the governor got rid of, and the *second* object effected.

This mode of making and using supervisors, or judges of election, unknown to law, secured the *third* object. The provision by them that such men should be subjected to prosecution for frauds, &c., was an idle show of *legislation*, entirely inoperative. To secure the *fourth* purpose the convention based their apportionment of representatives in the State election, to take place in January, 1858, upon the same spurious, fraudulent and fictitious votes so returned and rejected in the late territorial election. To secure the *fifth* object, they provided that all laws *then* existing (not those existing when the State should be admitted) should remain in force until repealed by a State legislature, under the constitution. The great mass of the people, unwilling to be the dupes of such trickery, declined voting in the manner proposed on that constitution, December 21, 1857; and the territorial legislature was assembled by the call of Acting Governor Stanton. A vote was taken on the 21st December, by the men appointed by Calhoun, who returned to him that there was cast some 6,000 votes, adopting the constitution with slavery, as formed. What proportion of these votes, or of those cast for the delegates, were fraudulent and spurious, we have no certain means of determining, as the Senate has declined instructing or authorizing the committee to obtain full information, or clothing them with the means for that purpose. We have, however, the authority of the presiding officers of the two branches of the legislature, who were present at the counting of the votes on the constitution, by invitation of said Calhoun, for saying that not more than two thousand of these were cast by legal voters of the Territory.

The territorial legislature, so assembled by Acting Governor Stanton, passed an act providing that the people, on the 4th of January, 1858, should cast their votes on said constitution, either for it with slavery, for it without slavery, or against the constitution.

That vote was taken, and the vote against the constitution was more than ten thousand majority.

The convention provided for the election of State officers and a legis-

lature under the constitution on the 4th day of January, 1858, but it was to be conducted by the same men so appointed by said Calhoun, and the returns made to him. As to the voting at this State election the free-State people were much divided in opinion. A large number declined to vote, as they feared the so doing would be unfairly insisted on by their opponents as a ratification of the constitution to which they were opposed. A part of the free-State people, who had thus voted against the constitution, apprehending, more especially from what was contained in the President's annual message, that Congress might admit Kansas as a State under and with this constitution, even though contrary to the will of the majority of the people there; and unwilling, in that event, to leave the State officers and legislature in the hands of the minority who framed and adopted that constitution, proceeded to vote at the election of those State officers at the polls conducted by the men so appointed by said Calhoun.

The returns of this election have been made to said Calhoun, but, as the committee have received no power to institute inquiry into the true character of that election, we are unable to say how far the well prepared arrangements for successful imposition have been carried into execution with impunity

From what has been disclosed by the investigations before the territorial legislature, we feel authorized to believe that the preparations to defeat the will of that people have been extensively executed, and their ultimate results depends on the action of said Calhoun, in a capacity unknown as a legal officer, in no way subject to prosecution or impeachment. That he will be faithful to the ultimate purposes for which he has so long and unscrupulously labored—that is, the making of Kansas a permanent slave holding State, whether its people desire or not—we have little reason to doubt, so far as he can do it with impunity.

The territorial government of Kansas was never organized as provided in its organic act—that is, by its own people—but was usurped by a foreign force, conquered, subdued by arms, and a minority installed in power, which has ever since been sustained by the general government, instead of being examined into and corrected. This has been done and sustained to establish and perpetuate slavery.

The Lecompton constitution is the result of this proceeding, and is contrary to the will of a great majority of that people legally expressed; and the proceeding of Congress, *at its discretion*, to consummate this protracted atrocity, and especially for such a purpose, is a violation of the fundamental principle of republican government, and can produce no permanent repose and satisfaction.

The people of that Territory in the late territorial election have reclaimed their rights, and that territorial government is for the first time now moving peaceably on in its legitimate sphere of promised freedom.

This Lecompton constitution and its adoption was concocted and executed to supersede this triumph of justice. To admit it by Congress is but to give success to fraud and encouragement to iniquity; and to turn over that people, not to an election fairly and legally

conducted, but to such State officers and legislators as said Calhoun shall hereafter proclaim, and on such contingency as he shall determine; and his long, mysterious, and inexcusable indecision and reserve but encourages expectations in both parties, one of which is certainly doomed to disappointment.

J. COLLAMER.
B. F. WADE.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 83.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1858.—Ordered to be printed.

Mr. STUART made the following

REPORT.

[To accompany Bill S. 162.]

The Committee on Public Lands, to whom was referred the petition of John L. Allen and Asa R. Carter, register and receiver of the land office at Augusta, Mississippi, praying extra compensation for locating Choctaw scrip and lands for the Ohio and Mobile railroad, respectfully report:

That they have examined the facts and circumstances upon which this application is based, and they find that, during the three years and a half the petitioners held said offices, their compensation for cash entries of lands and lands entered with military warrants amounted to $871 94, exclusive of their respective salaries, $500 each; that, during said three and a half years, there was entered at said office 22,101.07 acres of land, located with Choctaw scrip, besides all the lands located for the Ohio and Mobile railroad, which required much extra labor, clerk hire, &c.; for all of which the petitioners have received no compensation.

Your committee are of opinion that it is but fair and just the petitioners should be paid a liberal compensation for the extra labor and clerk hire necessarily performed and employed by them in locating said Choctaw scrip and railroad lands; they therefore recommend an allowance to the petitioners of the sum of six thousand one hundred dollars, in full for such extra services, clerk hire, &c., and herewith submit a bill for that purpose.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 84.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1858.—Ordered to be printed.

Mr. FOSTER made the following

REPORT.

[To accompany Bill S. 163.]

The Committee on Pensions, to whom was referred the petition of Mrs. Eliza A. Merchant, widow of Brevet Captain Charles G. Merchant, praying Congress to grant her a pension, beg leave to report:

That petitioner, on behalf of herself and child, claims a pension for the reason that her husband, the late First Lieutenant and Brevet Captain Charles G. Merchant, died in the military service of the United States, at Pascagoula, Mississippi, on the 4th of September, 1855. Petitioner alleges that her husband, Lieutenant Merchant, graduated at the United States Military Academy at West Point on the 30th day of June, 1843, and was promoted to brevet second lieutenant in the 8th regiment United States infantry, July 1, 1843; that he served during the war with the Mexican republic, and was brevetted first lieutenant, September 8, 1847, for gallant and meritorious conduct at the battle of Molino del Rey, and brevet captain, September 13, 1847, for gallant and meritorious conduct at the battle of Chepultepec; and on his return from Mexico he was ordered to Texas, and in an affair with Indians, May 20, 1850, was severely wounded, from which he never fully recovered; in April, 1858, he was ordered to East Pascagoula, Mississippi. The testimony of J. J. B. Wright, surgeon United States army, and John F. Randolph, who was acting assistant surgeon United States army, both strongly corroborate the statement of petitioner that the wound alluded to was the cause of his death. The Commissioner of Pensions, in a letter to this committee, dated January 2, 1857, says: "If the committee are of opinion, from the medical testimony, that his death was hastened by the wound, the claim of the widow to a pension would seem to be as meritorious as some others which have been allowed by special act." It is also disclosed by the Commissioner of Pensions that Charles G. Merchant was a first lieutenant at the time of his death. The committee, after a careful examination of the testimony, are of opinion that the death of Lieutenant Charles G. Merchant was hastened by a wound received in a battle with Indians May 20, 1850, and the application of Mrs. Eliza A. Merchant, his widow, is worthy the favorable consideration of Congress, and report the accompanying bill.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 85.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 164.]

The Committee on Claims, to whom was referred the petition of Mrs. Jane M. McCrabb, report:

The petitioner represents that she is the widow of the late Captain John W. McCrabb, an assistant quartermaster in the United States army; and she applies to Congress to be allowed a per centage for disbursement of moneys made by her late husband out of the special appropriations for the suppression of Indian hostilities, in addition to the regular appropriations for the quartermaster's department.

In his account rendered to the department shortly before his death, which occurred in November, 1839, Captain McCrabb charged for the disbursement of $215,259 67, at 2½ per cent., amounting to $5,381 10, accompanied with the following statement: "Though I have charged a per centage on my disbursements out of the appropriations for suppressing and preventing Indian hostilities from a deep conviction that it is a just and equitable claim, and should be allowed, as a just recompense for the extraordinary and unusual risks and responsibilities I had to encounter in making the said disbursements, I have retained no portion thereof."

The charge was disallowed by the accounting officers of the treasury; and the object of the petition of Mrs. McCrabb is, that Congress may allow the claim and authorize a credit to be given to her late husband, or to her, as administratrix, on the books of the Treasury Department. It is presumed, from this request of the memorialist, that Captain McCrabb died a debtor to the government, and that this claim is sought to satisfy his indebtedness to that extent.

It appears from a letter from the Quartermaster General's department to Hon. Richard Brodhead, chairman of the Senate Committee on Claims during the last Congress, dated January 16, 1855, that the whole amount of moneys disbursed by Capt. McCrabb, in Alabama and Florida, during the years 1836, 1837, 1838, and 1839, out of the appropriation for preventing and suppressing Indian hostilities in Florida, was $234,299 85; of which was disbursed, during the third and fourth quarters of 1839, $22,541 40. The act approved 3d of March, 1839, prohibited the

receipt by any officers having a salary of any extra allowance or compensation for disbursing public money, or the performance of any other service, unless the extra allowance or compensation was authorized by law. This act prohibits the allowance of any extra charge to Captain McCrabb upon the above sum of $22,541 40 disbursed after its enactment. The remainder of his disbursements of said fund was made in 1836, 1837, 1838, and the first quarter of 1839, and amounted to $211,758 45. Upon this sum, in the opinion of the committee, Captain McCrabb is justly and equitably entitled to a commission of 2½ per cent. for disbursing the same. It is clear that the disbursing of the special appropriation aforesaid was no part of his official duty as assistant quartermaster, and was imposed upon him, as appears by the letter of General Jesup, of December 15, 1853, by the sudden and pressing emergency of the public service, growing out of the Creek and Seminole wars, and the contracted force in the quartermaster's department. The disbursements were made under circumstances which subjected Captain McCrabb to great anxiety and risk of loss, and he could hardly have disbursed so large a sum, under the difficult circumstances by which he was surrounded, without considerable loss. Under this state of facts the committee think he is justly entitled to extra compensation. If he had not disbursed these sums, the government would have been compelled to employ a special agent for that purpose, at an expense not less than the amount claimed by Captain McCrabb.

The question of the equitable liability of the government, under such circumstances, to pay extra compensation, has been repeatedly adjudicated by the Supreme Court of the United States, and in every case that court has allowed such extra allowance to be plead by way of a set-off against the government, in a suit against the officer.—(See McDaniel's case, 7 Peters, 1; Ripley's case, 7 Peters, 18, and Finlebrown's, 7 Peters, 28.) In these cases, and many others, the doctrine is established that an officer of the government is equitably entitled to and will be allowed by the courts a claim for extra services rendered to the government, under the orders of a department, though there is no act of Congress providing for the case, and an auditor of the treasury could not allow the claim. In the case of General Ripley the court decided, that "for extra services performed by a military officer, under the sanction of the government, or under circumstances of peculiar emergency, the court may allow a reasonable compensation by way of offset." Congress has repeatedly recognized this principle. The act of August 30, 1852, for the relief of M. Hetzel, (10 Stat. 736,) and the act of 3d August, 1854, for the relief of Helen Mackay, widow of Colonel Eneas Mackay, (10 Stat. 813,) are in point. These cases were similar, in all respects, to the case of Captain McCrabb, except that the circumstances attendant upon his disbursements were of a more difficult and hazardous character than in the other cases.

The committee consider the claim of the memorialist, in this case, to the extent indicated, a just and equitable one, and in accordance with the principles decided by the Supreme Court and the precedents established by Congress in the cases above alluded to. They therefore report the accompanying bill, and recommend its passage.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 86.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 24, 1858.—Ordered to be printed.

Mr. CLARKE made the following

REPORT.

[To accompany Bill S. 166.]

The Committee on Claims, to whom was referred the memorial of Eleazer Williams, report:

In this case the memorialist claims pay for services rendered by him to the United States, in procuring lands from the Menomonee and Winnebago Indians, in the then Territory of Wisconsin, for the use of the New York and St. Regis tribes. These services were rendered at various times from 1819 to 1832, and resulted in the treaties of 1827, 1831 and 1832, between the United States and said tribes.

The history of embassies sent by the New York Indians to the Green Bay country, in Wisconsin, and of the negotiations at Butte des Mort in 1827, and of those leading to the treaties with the Menomonees and Winnebagoes in 1831–'32, extending from 1829 to the ratification of the treaty of October, 1832, with the Menomonees, contains evidence of the connexion of Mr. Williams with the interests and transactions of the New York tribes. He was reputed to be a half-breed of the St. Regis tribe, and was sent by them, and recognized as their agent, and as such signed various articles, treaties and memorials.

In a letter to the Hon. John H. Eaton, then Secretary of War, dated December 5, 1830, General Cass, in recommending Mr. Williams as a sub-agent at Fox river, says: "He rendered essential service to the United States during the late war, in which he was actively engaged and badly wounded, the effect of which will probably continue during life. I understand that he enjoyed the confidence of one of our highest and most distinguished officers, and bravely led a heavy column in the battle of Plattsburg. He is a gentleman of education and talents, and from his position and associations can render important services to the government and the Indians."

At the treaty made at Buffalo creek, in the State of New York, 15th January, 1838, with the New York Indians, there is this special provision for the St. Regis tribe, viz:

"*Article* 9. It is agreed with the American party of the St. Regis Indians, that the United States will pay to said tribe, on their removal west, or at such time as the President shall appoint, the sum of $5,000,

as a remuneration for moneys laid out by said tribe, and for services rendered by their chiefs and agents in securing the title to the Green Bay lands, and in removal to the same; the same to be apportioned out to the several claimants by the chiefs of the said party and a United States commissioner, as may be deemed by them equitable and just."—(7 Stat. 552.)

By this treaty, the New York Indians ceded their lands, at Green Bay, to the United States for certain lands lying west of the State of Missouri, set apart for permanent homes for the Indians.

Mr. Williams appeared at the council which negotiated this treaty, and signed the treaty as the sole chief and agent of the St. Regis tribe.

In a supplemental article to this treaty, done at the council house at St. Regis, on the 13th February, 1838, there was this further provision, viz:

"The United States will, within one year after the ratification of this treaty, pay over to the American party of said Indians one thousand dollars, part of the sum of $5,000 mentioned in the specific provisions for the St. Regis Indians, anything in said article contained to the contrary notwithstanding."

The memorialist contends that this sum of $5,000, provided in the treaty of January 15, 1838, was for the purpose of repaying the St. Regis Indians the sum of $1,000, for monies advanced by the tribe in the procurement of the lands at Green Bay, and for paying Mr. Williams the sum of $4,000, for services rendered in procuring and settling the title to those lands, and in fixing the boundaries thereof.

And, in this view of the matter, the committee think Mr. Williams is sustained—

1st. By the language of the treaty.

2d. By the statement of Mr. Schermerhorn, commissioner in 1836 to treat with the New York Indians, and who negotiated the preliminaries of the treaty of 1838.

The treaty of January 15, 1838, was finally concluded by R. H. Gillet, commissioner, who says, in a communication to the Indian Office dated 25th March, 1853: "The preliminary arrangements for that treaty were made by my predecessor, to whom I was referred for such information as I might need. Nearly every original paper connected with that treaty was burnt with my office in 1839." Thus it appears that the preliminary arrangements of Mr. Commissioner Schermerhorn were to be recognized as the basis of the treaty, and that the original papers, which might have afforded a solution of all subsequent questions arising out of its execution, were destroyed by fire soon after the conclusion of the treaty, while in the commissioner's custody.

By the act of 1846, $1,000 was appropriated for the payment of that sum, as designated in the supplemental article.

Prior and repeatedly since that payment was made, Mr. Williams applied to the President for the $4,000 claimed as belonging to him. In 1850 he submitted, amongst others, a paper signed by eighteen of the tribe, and representing themselves as the "chiefs and warriors," fully recognizing and conceding the claim of Mr. Williams.

In 1852 Congress made an appropriation for the fulfilment of the treaty, as follows, viz: "For payment to the American party of the St. Regis Indians, (less the sum of $1,000, &c.,) as a remuneration for moneys laid out by said tribe, and for services rendered by their chiefs and agents in securing the title to the Green Bay lands, and in removal to the same, agreeably to the provisions of the ninth article of the treaty with the Six Nations of New York, of 15th January, $4,000."—(10 Stat., 18.)

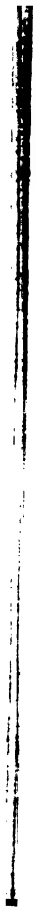
S. Osborne was appointed commissioner, as required by the treaty, and in the discharge of his duty, under instructions from the department, he held a council with the chiefs of the American party of the St. Regis Indians, but the parties failed to agree. The chiefs claimed the money, as an annuity to the tribe, to be paid *per capita*, while the commissioner came to the conclusion that most, if not all, of the money rightfully belonged to Mr. Williams. No other person claimed any portion of it for any services or expenditures in regard to the Green Bay lands—that being the specific object for which it was stipulated to be paid. The commissioner declined to pay the money to be distributed *per capita*, as claimed by the tribe, and so reported to the department; whereupon he was directed to return the money, which being done he was discharged.

Marcus F. Johnson was then appointed commissioner, in place of Mr. Osborne, with instructions that the department had decided against the claim of Mr. Williams, and that he should "regard its decision in that respect as final and conclusive." Mr. Johnson, accordingly, proceeded to St. Regis, and on the 23d June, 1853, apportioned the money, giving to two chiefs $450 each, and to other individuals of the tribe $7 each, *per capita*.

After a full and careful consideration of the facts and circumstances of the case, the committee are clearly of opinion that this sum of $4,000, by the terms and intent of the treaty, was not to be paid to the tribe *per capita*, but to their "chiefs and agents" "for services rendered;" and that the department exceeded its proper authority by directing the commissioner to reject the claim of Mr. Williams, and prescribing how the money should be disposed of. By the terms of the treaty the money was to be paid to the parties, and for the purposes therein named, as the commissioner and the chiefs should deem just, and not to such parties or in such manner as the department and chiefs should subsequently agree upon.

By that decision of the department Mr. Williams was deprived of any further opportunity of vindicating and establishing his claim before the commissioner, as contemplated by the treaty, and thereby, (as we think,) deprived of his just pay for services rendered, and the money intended for that purpose was misapplied.

In accordance with these views, the committee report a bill for the payment of the four thousand dollars to Mr. Williams, to which, they think, he is justly entitled, as well for valuable services rendered to the government, as by the true intent and meaning of the parties to the treaty.



35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 87.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1858.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany Bill S. 42.]

The Committee on Commerce, to whom was referred "a bill to provide for the construction of a custom-house, court-house, and post office in Trenton, in the State of New Jersey," have had the same under consideration, and beg leave to report:

That, in their opinion, it is inexpedient to make an appropriation for a custom-house at that place. They also, herewith, present a letter from the Secretary of the Treasury as part of their report, (A.)

That part of the bill providing for a court-house and post office to be erected at the above place, not coming appropriately before them for action, is hereby reported back to the Senate for reference to the appropriate committees.

A.

TREASURY DEPARTMENT,
January 26, 1858.

SIR: I have the honor to acknowledge the receipt of your letter of the 21st instant, enclosing a bill "to provide for the construction of a custom-house, court-house, and post office, in Trenton, in the State of New Jersey," and requesting any information that the department may have in its possession, and with its views in respect to the same.

In reply, I have to say that Trenton is neither a port of entry nor delivery, and that there are no facts before the department which would justify its recommending it as a port of *entry;* and, therefore, no custom-house is needed.

In the matter of the construction of a court-house and post office, this department can give no opinion, such subjects belonging to the Interior and Post Office Department, respectively.

The bill is herewith returned.

In view of the number of applications to Congress for erecting custom-houses, post offices, and other public buildings, I would respect-

fully call your attention to the recommendations of my annual report on the subject. Every day's experience impresses more strongly upon my mind the absolute necessity of adopting some system in relation to public buildings which will protect the government from improvident expenditures in this branch of business, as well as to secure equality and justice to different localities. Custom-houses, post offices, and court-houses, if built at all by the government, should be first erected at those points where the largest amount of business is transacted; and the system, conducted upon this principle, could be extended to other points, as far as the means of the government would authorize and justify it.

In the present condition of the finances of the government, I feel it to be my duty to urge upon Congress the propriety of refusing all applications of this character which are not absolutely demanded by the necessities of the public service; and as I am not aware of any such cases, I would suggest for your consideration that the present is an inauspicious moment for the inauguration of a system of public expenditure, which would for a series of years constitute a heavy draft upon the treasury. In my annual report I expressed my opposition to the recent policy of erecting public buildings, and I desire now to add the additional consideration, growing out of our financial embarrassments, as a conclusive reason for not favoring such a policy at this time.

These views are presented in this letter, not on account of their peculiar application to this particular case, but for the purpose of calling your attention to the subject generally.

I am, very respectfully,

HOWELL COBB,
Secretary of the Treasury.

Hon. C. C. CLAY, Jr.,
Chairman Committee on Commerce,
United States Senate.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 88.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1858.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany Bill S. 49.]

The Committee on Commerce, to whom was referred "A bill to provide for the construction of a custom-house, court-house, and post office in Apalachicola, in the State of Florida," have had the same under consideration, and beg leave to report:

That in their opinion it is inexpedient to make an appropriation for a custom house at that place. They also herewith present, as part of their report, a letter from the Secretary of the Treasury on the same subject, (A.)

That portion of the bill providing for the construction of a court-house and post office not being appropriately referred to this committee, is hereby reported back to the Senate for their appropriate reference.

A.

TREASURY DEPARTMENT,
January 26, 1858.

SIR: I have the honor to acknowledge the receipt of your letter of the 21st instant, enclosing a "Bill to provide for the construction of a court-house, post office, and custom-house in Apalachicola, in the State of Florida," and requesting to be furnished with any information the department has in its possession, and its views respecting the same.

In reply I have to say, that the revenue collected at that port for the year ending June 30, 1855, was $3,828 22, and the expenses of collection $5,959 40; for the year ending June 30, 1856, the revenue collected was $5,566 95, and expenses of collection $5,521 60; and the expenses of collection for the year ending June 30, 1857, was $4,850 94, while the revenue collected was but $4,148 26. It appearing from this statement that the expenses of collecting the revenue exceed the

receipts therefrom, and the business of the port requiring but limited accommodations for its transaction, the department is of the opinion that it is not expedient to erect a custom-house at that port.

The bill is herewith returned.

The "Bill for the construction of a marine hospital at Apalachicola" has not been received at the department.

I am, very respectfully,

HOWELL COBB.
Secretary of the Treasury.

Hon. C. C. CLAY, Jr.,
Chairman Committee of Commerce, U. S. Senate.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 89.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1858.—Ordered to be printed.

Mr. POLK submitted the following

REPORT.

[To accompany Bill S. 158.]

The Committee on Claims, to whom was referred the memorial of Anthony S. Robinson, only surviving son and heir of Doctor John H. Robinson, deceased, report:

This claim was examined by the Committee on Claims of the last Congress. This committee has carefully re-examined the case and concur in the views of the former report, to wit:

This was originally a claim against the government of Mexico for compensation for military services, and is alleged to be embraced by the terms of the treaty of Guadalupe Hidalgo, for the payment of which the government of the United States became responsible.

The 14th article of that treaty provides that "The United States do furthermore discharge the Mexican republic from all claims of the citizens of the United States not heretofore decided against the Mexican government, which may have arisen previously to the date of the signature of this treaty." And the 15th article provides that "The United States, exonerating Mexico from all demands on account of the claims of their citizens, mentioned in the preceding article, undertake to make satisfaction for the same," &c.

The claim was presented to the board of commissioners on Mexican claims, and was rejected on the ground that "the board refused to recognize as valid a claim founded solely on military services rendered to a foreign government."

The board lay down the following rule as the law applicable to this class of cases, viz: "When citizens of the United States leave their own country and enter into the service of another, they thereby voluntarily renounce their allegiance, and with it relinquish their right to the protection of the government under which they were born. They are to be regarded as citizens of the country of their adoption, and in whose service they were employed."

The memorialist takes exception to these principles thus laid down

and acted upon by the board as inconsistent with the well settled rules of law, as a violation of the plain provisions of the treaty, and as unjust and oppressive to himself and others.

The decision of the question thus in issue will dispose of the case.

It appears from a letter of the Secretary of State to the chairman of the committee, in answer to inquiries, that the facts of the case, as embodied in the memorial, are substantially the same as they appear upon the records of the board of commissioners, viz: that the said John Hamilton Robinson was a citizen of the United States, and in the beginning of the year 1815, taking a deep interest in the independence of Mexico, he entered the military service of that country, and, in pursuance of a decree of their Congress, he was duly commissioned a brigadier general in the Mexican army, in which capacity he continued in the faithful discharge of his duties until the time of his death, which occurred in 1819, and that he received no compensation for said services or for the losses incident to them, "although by the agreement of the Mexican authorities and the subsequent legislation of the Mexican government he was fully entitled to the same."

To show the intention of General Robinson to return to the United States and retain his character as a citizen thereof, in addition to the fact stated in the memorial that he was so designated in his commission, evidence is submitted that his family continued to reside at Natchez, in the State of Mississippi, and that General Robinson, although still in the Mexican service, returned to Natchez, where he died, and letters of administration were granted on his estate, as "late of said county." The committee are therefore of opinion that, at the time of his death, he was a citizen of the United States, and that he had a just claim against the government of Mexico for personal services rendered under an express contract. It does not arise out of any tort on the part of the Mexican authorities, and could not therefore be the subject of complaint from one government against another; and it is not usual for governments to interpose to enforce the performance of civil contracts between their own subjects and a foreign state any more than it would if the contract were with the private citizens or subjects of such state. In the absence, then, of any law or treaty which would have the effect to make these claims an exception to the general rule, the committee would concur with the board in rejecting the claims, although upon grounds differing from those upon which they have placed their decision.

The treaty of Guadalupe Hidalgo was not exclusively a treaty to adjust the differences and liquidate the wrongs which either government had charged against the other, but it embraced, as a substantive and important feature, the purchase and sale of property and the payment and receipt of money and its equivalents. By its terms, the United States exonerated Mexico from all debts and liabilities due from that government to citizens of the United States, and contracted to liquidate and pay the same, in consideration of three and a half millions of dollars, a portion of the purchase money, for territory acquired.

If General Robinson was a citizen of the United States, having a just claim against the government of Mexico, it is not perceived how

his heirs can be justly and equitably denied payment. The position assumed by the board of commissioners was, that they would not "recognize as valid a claim founded solely on military services rendered to a foreign government." That such service would constitute a just claim against the government to which it was rendered cannot be doubted, whether performed by a citizen or an alien—and there is nothing in the treaty excluding claims of that character. It is true that the 15th article of the treaty provides that the awards of the board "shall be final and conclusive;" but, although this might be interposed as a bar to the recovery of a judgment in a court of law, it is not presumed that Congress would be disposed to assign it as a reason for avoiding an equitable and otherwise just and legal responsibility, especially as a considerable portion of the three and a quarter millions of dollars still remains in the treasury.

This claim appears to have been before the mixed commission under the treaty of 1839, and favorably considered by the American commissioners, but ruled out by the umpire as not being within the cognizance of the board.

It appears from the additional evidence now produced that the compensation allowed by the laws of Mexico to an officer of the grade held by General Robinson, including rations, &c., amounted to the sum of $4,239 per annum, which, for the period during which he appears to have been in the service, viz: four years, would amount to $16,956; and for the payment of that sum, to be paid out of the money belonging to Mexican indemnity fund still remaining in the Treasury of the United States, the committee report a bill and recommend its passage.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 90.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1858.—Ordered to be printed.

Mr. BROWN made the following

REPORT.

[To accompany Bill S. 168.]

The Committee on the District of Columbia, to whom was referred the memorial of the Corporation of Georgetown, submit the following report:

The memorialists set forth their case briefly and pointedly. The committee append the memorial and make it a part of their report.

To the honorable Senate and House of Representatives of the United States:

The undersigned, a committee appointed by the corporation of Georgetown to represent its interests before Congress, would respectfully represent:

That by the act of Congress of July 1, 1812, the levy court of Washington county was authorized to lay a tax not exceeding twenty-five cents on all property in said county, except Washington city, for general county purposes.

That by the same act the general county charges, other than for roads out of Washington city and Georgetown, were to be borne one half by Washington city and one half by the other parts of said county.

That by the act of May 20, 1826, the power to tax in Georgetown by the levy court was taken away, and said corporation of Georgetown was made not obliged to contribute in any manner towards the expenses of the levy court except for "one fourth of the expenses incurred on account of the orphans' court, the office of coroner, the jail of the county, and one half of the expenses for the opening and repairing of roads in the county of Washington, west of Rock creek, and leading to Georgetown." By the same act the levy court was relieved of taking care of the Georgetown poor.

The undersigned would respectfully represent that the tax upon Georgetown of paying for one half of the roads of Washington county, west of Rock creek, is onerous and unjust. The tax upon the real and personal property in Georgetown is eighty-five cents in the hun-

dred dollars. The tax upon the real and personal property in the county is twelve-and-a-half cents in the hundred dollars. Property in Georgetown is assessed at least at one hundred and twenty per cent.—that in the county is notoriously assessed at not more than sixty per cent. It is undoubted that the rate of taxation in Georgetown is at least ten times greater than in the county. The county pays no portion of the expenses of our streets, and there is no reason why our town should pay for the county roads. It is not in the power of our town to say what roads should be made or repaired. The levy court may run our town into any amount of debt that it pleases.

It is not fair or just that a people heavily taxed, and considerably in debt, should be compelled to pay the expenses of another people but little taxed, and not at all in debt. There is no sort of equity in any such arrangement. The expense of county roads is a fair and proper charge upon the county, as our streets are a fair charge upon us. We do not call upon the county for any contribution, and the county should not call upon us. If the county roads are a fair charge upon us, our streets are as fair a charge upon the county.

The undersigned respectfully pray that the corporation of Georgetown may be relieved from the payment of one half of the expenses of opening and repairing the roads in Washington county, west of Rock creek, leading to Georgetown.

HENRY ADDISON.
ROB'T. OULD.

Your committee believe the facts to be correctly set forth, and concurring with the memorialists as to the justice of the case, they report a bill.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 91.

IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1858.—Ordered to be printed.

Mr. CLAY made the following *adverse*

REPORT.

[To accompany Bill H. R. No. 14.]

The Committee on Commerce, to whom was referred (H. R. 14) "An act to authorize the Secretary of the Treasury to issue a register or enrolment to the vessel called the James McIndoe, now owned by Thomas Coatsworth, James G. Coatsworth, and William Coatsworth, of Buffalo, New York," have had the same under consideration, and report as follows:

That, for reasons set forth in a letter from the Treasury Department, (which they present as part of their report,) it is the opinion of the committee that the petition should not be granted, as it would be establishing an impolitic precedent, and would be rendering the government of the United States liable and accountable for any malfeasance on the part of any officer of the customs. The committee, therefore, report against the bill, and beg leave to be discharged from the further consideration of the subject.

TREASURY DEPARTMENT,
February 20, 1858.

SIR: I have the honor to acknowledge the receipt of your letter of the 3d instant, enclosing "An act to authorize the Secretary of the Treasury to issue a register or enrolment to the vessel called the James McIndoe, now owned by Thomas, James G., and William Coatsworth," with the accompanying paper, and, in reply to your request for any information on the subject in the possession of the department, and its views in regard to the expediency of the proposed measure, to inform you that a practice formerly existed in the district of Buffalo allowing scows and canal boats built in Canada to be introduced there on the payment of duties as manufactured lumber, some of which boats were afterwards engaged in the coasting trade. The case in question was one of this description, and admitted to entry by the deputy collector at Black Rock. As soon, however, as the collector of the cus-

toms for the district heard of the transaction he caused the entry to be cancelled, the duties to be refunded, and notified the parties that the boat in question could not be permitted to ply as an American vessel, and the action of the collector was approved by this department.

In view of the policy of existing laws which forbid, except in certain cases, foreign built vessels from receiving American marine papers, the department cannot recommend the proposed measure.

The act and accompanying paper are herewith returned.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

Hon. C. C. CLAY, Jr.,
Chairman of Committee on Commerce, U. S. Senate.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 92.

IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1858.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 171.]

The Committee on Naval Affairs, to whom was referred the memorial of Otway H. Berryman, praying to be allowed the amount of money paid by him in the adjustment of his accounts as purser, have had the same under consideration, and report:

That the grounds relied upon by Lieutenant Berryman are substantially those which induced Congress to grant relief to Lieutenant Charles G. Hunter, at the present session, and your committee cannot distinguish between them.

Lieutenant Berryman assumed the command of the United States schooner On-ka-hy-e in October, 1846, under an order from the Navy Department, dated the 20th October, 1846, and he immediately entered upon special duty, and performed active and arduous service in the Gulf of Mexico, to Brazil and Chagres, during twenty-two months, which was terminated by the total shipwreck of the vessel on a sunken reef in July, 1848.

With his command he was ordered to perform the duties of purser to the vessel, and these duties he performed throughout the whole period of his command.

No adjustment of his accounts took place until his return to the United States, when it was found that he had actually expended as purser more money, by $2,325, than he could produce the requisite vouchers for. This sum he paid to the government, and his accounts were balanced accordingly.

The memorialist alleges that he has diligently and faithfully kept and disbursed the means entrusted to him as purser, to pay the lawful liabilities of the government, and that the omission to take and return the proper vouchers for all his expenditures was alone the result of his ignorance of and his want of practice in the duties of purser.

The memorialist has a family to support, dependent upon him. He had a small landed estate, which he sold to pay his deficiency, and himself and family have thereby become subjected to great pecuniary embarrassment.

Your committee, from an examination of the memorial and its accompanying papers, and from inquiries also at the Navy Department, are satisfied that the memorialist, whose character and standing as an officer and a man are irreproachable, did faithfully disburse the means entrusted to him in the payment of the proper liabilities of the government; and that his ignorance of his accounts, and of the importance of carefully preserving vouchers for every expenditure, was due to his general want of familiarity with the duties of his incidental post of purser. He received no compensation for the performance of these duties, nor could he receive any legally. His deficiency is the result of no misapplication of the means of the government, of no want of due care and diligence in guarding and preserving them. The government has had the benefit of the expenditure.

The amount of disbursements by memorialist as purser, during the period referred to, for which he obtained credit at the department, were $21,951 50.

Your committee deem it a proper case for relief, and report a bill accordingly.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 93.

IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1858.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 172.]

The Committee on Naval Affairs, to whom was referred the memorial of William D. Moseley, asking relief from a contract to furnish live-oak for a sloop-of-war, which he assumed as surety, have had the same under consideration, and report:

That Harrison R. Blanchard contracted with the United States on the 25th September, 1855, to deliver at the navy yard, New York, on or before the 1st October, 1856, live-oak for naval purposes, described in the contract as follows: "30,000 cubic feet of live-oak timber, viz: 3,600 feet of principal pieces, at $1 75 per cubic foot; 20,400 feet of moulded timber, at $1 30; and 6,000 feet of promiscuous pieces, at $1 per cubic foot, amounting in all to $38,820." For the performance of this contract the memorialist, together with Mr. A. Williams, was joint surety in the sum of $70,000; and upon the failure of the contractor to perform it, the memorialist took an absolute assignment of the contract from him, as his affidavit shows, and at once entered upon its performance in good faith.

Upon referring to the scale of offers accompanying the report of the Secretary of the Navy of the 1st of December, 1856, it will be perceived that Mr. Blanchard's offer was $8,580 lower than the next highest bidder. By the terms of the contract the timber was to be cut within thirty miles of the sea; and the memorialist states, what is also known to the committee, that Indian hostilities existed in this country, and he alleges that he was thereby prevented from executing it. He, however, furnished a large portion of the timber, and the Navy Department contracted with a new party for supplying the remainder, at prices exceeding those allowed to Blanchard, viz: for 2,800 cubic feet of principal pieces at $2 per foot, and 13,000 feet of moulded timber at $1 50 per foot, amounting in all to $25,100, being an excess of $3,300 over Mr. Blanchard's contract.

From the copy of the letter hereunto annexed, addressed to the honorable Secretary of the Navy by the chief of the Bureau of Con-

struction, Equipment and Repair, and communicated to your committee, upon their application to the Navy Department for information, it appears that "there has been paid to Mr. Blanchard on his contract the sum of $13,979 35, and the reservation in the hands of the government amounts to $2,466 94."

Your committee find that the memorialist contracted to deliver this timber at unusually low rates, and that he entered upon the performance of his contract in good faith, and probably would have completed it but for Indian hostilities; "that if the contract be closed," and the reservation of $2,466 94, retained by the United States, be paid to the memorialist, "the average of the whole contract will then be at a low rate, and the entire frame, under the two contracts, will have been delivered for $41,546 29, which, in my opinion, (the bureau) is on advantageous terms to the government;" that the United States having therefore lost nothing, but having actually obtained this timber upon advantageous terms, your committee deem the memorialist entitled to relief and report a bill accordingly.

NAVY DEPARTMENT,
Bureau of Construction, Equipment, &c., Feb. 17, 1858.

SIR: In compliance with your instructions endorsed on the letter of the chairman of the Naval Committee of the Senate to the department, of the date of 4th February, would respectfully state, that on the 25th September, 1855, a contract was made with Mr. Blanchard for the delivery at the New York yard, on or before the 1st October, 1856, of 30,000 cubic feet of live-oak timber, viz: 3,600 feet of principal pieces, at $1 75 per cubic foot; 20,400 feet of moulded timber, at $1 30, and 6,000 feet of promiscuous pieces, at $1 per cubic foot, amounting in all to $38,820.

Upon referring to the scale of offers accompanying the report of the Secretary of the Navy, of the 1st December, 1856, it will be perceived that Mr. Blanchard's offer was $8,580 lower than the next highest bidder.

The contract was not completed within the time specified, for the reason, as then stated by the contractor or his surety to the department, that they were prevented by the hostile Indians; but the government has suffered no loss thereby, and the timber has not been wanted for use.

It being understood that the contract could not be fulfilled, on the 4th August, 1857, a letter was addressed by this bureau to Mr. Moseley, one of the sureties, to ascertain certainly the intention of the contractor, so that proper steps might be taken to complete the contract.

Mr. Moseley replied, on the 1st September, 1857, that he was unable to complete it, and at the same time expressed his readiness to send forward all the timber he then had cut conforming to the contract, that it might be taken. This showed a willingness on his part to fulfil his engagement as far as lay in his power, and it was placing further security in the hands of the government. A portion of this timber was delivered, and the whole would have been, it appears, as

is stated in the memorial, but the vessel engaged refused to take it on account of its size.

On the 17th November, 1857, a contract was made with other parties to complete the contract of Mr. Blanchard, viz: for 2,800 cubic feet of principal pieces, at $2 per foot, and 13,000 feet of moulded timber, at $1 50 per foot, amounting in all to $25,100, being an excess of $3,300 over Mr. Blanchard's contract. If the actual measurement proves to be less than the estimated quantity, which it probably will, the excess will not be so much.

There has been paid to Mr. Blanchard on his contract the sum of $13,979 35, and the reservation in the hands of the government amounts to $2,466 94. If the contract is closed and the reservation paid, the average of the whole will then be at a low rate, and the entire frame, under the two contracts, will have been delivered for $41,546 29, which, in my opinion, is on advantageous terms to the government.

With respect to the 2,000 cubic feet, which Mr. Moseley says he will have on his hands, of principal pieces or moulded timber, or that will make such, and it proves to be suitable and satisfactory, it might without detriment be taken at not exceeding his contract rates.

The papers are herewith respectfully returned.

Respectfully, your obedient servant,

JOHN LENTHALL,
Chief of the Bureau.

Hon. ISAAC TOUCEY,
Secretary of the Navy.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 94.

IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 173.]

The Committee on Claims, to whom was referred the petition of Mary Petery, report:

This claim is for pay for a horse which was injured and lost while in the use of the government and employed in transporting military stores near Buffalo, in the State of New York.

The evidence seems to prove the loss of the horse while in charge of a United States soldier, and in the actual military use of the government and under circumstances which, although they do not authorize the accounting officers to pay for it, yet seem to give rise to an equitable claim for compensation; and the committee report a bill allowing seventy-five dollars, the appraised value of the horse.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 95.

IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1858.—Ordered to be printed.

Mr. FOSTER submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Joseph Dowd, late a private in the army of the United States, having had the same under consideration, do now respectfully report:

That the petitioner is now in the receipt of the highest rate of pension allowed for full disability in his grade in the service, and unless there should be an alteration in the general law, your committee are of opinion that his pension ought not to be increased. They therefore recommend the passage of the accompanying resolution:

Resolved, That the prayer of the petitioner be not granted.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 96.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1858.—Ordered to be printed.

Mr. DURKEE made the following

REPORT.

[To accompany Bill S. 177.]

The Committee on Private Land Claims, to whom was referred the petition of William Marvin, praying confirmation of his title to certain lands in Florida, claimed under a Spanish grant, have had the same under consideration, and adopt and submit the following report heretofore made by this committee:

The petitioner claims 7,000 acres of land on the east side of the river St. John, between the places known as "Dunn's Lake" and "Horse Landing," and to include a place known as "Buffalo Bluff," in the State of Florida, by virtue of a concession, dated December 20, 1815, from "Estrada," then governor of Florida, to one Bernardo Segui.

It appears that said Bernardo Segui, then a subject of his Catholic Majesty, on the 19th day of December, 1815, petitioned the governor of Florida for a grant of lands; which petition is as follows: (see Am. State papers, D. Green's ed., vol. 4, p. 757:)

"*Don Bernardo Segui, notary public pro tem. for the town of Fernandina, resident in this city, respectfully showeth:*

"That, with the permission of your excellency, he has come to this capital solely with the object of making known to you, as he has already done verbally, the deplorable situation and condition of that population, originating from a want of commerce, in consequence of the declaration of peace between Great Britain and the United States. In May of the present year, your memorialist was appointed by your lordship's predecessor, Don Sebastian Kindelan, to the office which he now holds in said town, and as he thought to have obtained by it the greatest advantages, he abandoned in this city, as is well known, the business which he had for the support of himself and family, resulting thereby his leaving a certainty for an uncertainty, and consequently at the present without any means whatever.

"The town of Fernandino, as he has already stated, is in such a deplorable situation on account of there not being any trade whatever, that your memorialist passes entire weeks without obtaining a half real in fees. If, therefore, a fact so positive, added thereto the limited services he has performed, merit the consideration of your lordship, he hopes to obtain from your well-known justice, and in virtue of the superior orders of his Majesty, (whom God preserve,) in which he recommends that lands be granted gratis to Spanish subjects, that you be pleased, therefore, grant him in absolute property the quantity of seven thousand acres of land on the east side of the river St. Johns, between the place called Dunn's Lake and that known as Horse Landing, including in said tract of lands the place called Buffalo Bluff, which latterly given up to the government by the house of Juan Forbes and company, in exchange for other lands. Therefore, your memorialist prays that your lordship may be pleased to grant him the said quantity of seven thousand acres of land in the place mentioned, not doubting that he will obtain them from the known justice of your lordship.

"BERNARDO SEGUI.

"ST. AUGUSTINE, FLORIDA, *December* 19, 1815."

Upon which petition, Governor Estrada on the next day, to wit: December 20, 1815, made the following decree:

"The renunciation made by Don Juan Forbes & Co. of the lands mentioned by the interested in this memorial being certain, and in virtue of the reasons which he indicates to this government, let there be granted to him, in absolute dominion, the seven thousand acres of land which he petitions for, under the boundaries which he points out without injury to a third person, despatching for his security a certified copy of this concession, which will serve him in every event for a title in form.

"ESTRADA."

On the 10th day of December, 1818, Don Andrew Burgevin, private surveyor in the city of St. Augustine, East Florida, issued the following certificate of survey:

"I certify that, in virtue of the permission of this government, I have measured and marked the boundaries of a tract containing seven thousand acres, more or less, situated on the east of the river St. Johns, at the place known as Buffalo Bluff, and running south, bounding the waters of said river, as is more fully seen by the annexed plat, which piece of land belongs to Don Bernardo Segui, by a concession made to him by this government the 19th of December, 1815."

At the date of the cession of Florida by the Spanish government to the United States, the said Bernardo Segui was in the full possession and enjoyment of the lands in question, under, and by virtue of, the aforesaid grant.

Under the act of Congress entitled "An act for ascertaining claims and titles to land within the Territory of Florida," approved May 8, 1822, the said Bernardo Segui filed his claim before the commissioners appointed in conformity thereto, who, in their report to the

Secretary of the Treasury, dated January 20, 1824, (Am. State Papers, Pub. Lands, D. Green's ed., vol. 3, p. 644,) make use of the following language in reference to said claim:

"The claimant in this case produced in evidence a memorial and decree of absolute property from the governor, dated 20th December, 1815, for seven thousand acres of land, a plat and certificate of survey, by which it appears, that in virtue of the decrees of the Cortes of 22d January, 1813, and the royal order of 1815, there was granted to the claimant, in absolute property, the seven thousand acres of land, at the place set out in the memorial and certificate of survey; and as we conceive that, by the decrees and order aforesaid, the quantity to be apportioned according to the merit of the applicant and the number of his family was left alone to the discretion of the governor for the time being, that title of the claimant would have been confirmed to him under the Spanish government, we recommend the case to Congress for their confirmation."

In the year 1825, one John B. Strong became the owner of said land, by the foreclosure of a mortgage, executed to him by the said Fernando Segui. Strong died shortly after he acquired title, leaving as his heirs-at-law, five children, all minors, the youngest of whom did not arrive at full age until 1835. The widow died shortly after the decease of her husband, and there was no guardian for the children appointed, who were removed to the States of New York and Connecticut immediately after the death of their mother.

By the act of Congress, approved May 23, 1828, all claims to land in the Territory of Florida, embraced by the treaty, which shall not have been decided and finally settled by the provisions of the said act, containing a greater quantity of land than the commissioners were authorized to decide, and above the amount confirmed by the said act, were to be referred, within one year from the passage thereof, or be forever barred, to the judge of the superior court of the said Territory, for adjudication by said court. By the act approved May 26, 1830, "all the remaining claims which have been presented according to law and not finally acted upon, shall be adjudicated and finally settled upon the same conditions, restrictions, and limitations, in every respect, as are prescribed by the act approved May 23, 1828."

Under neither of the aforesaid acts was a petition filed by the said minor children and heirs-at-law of the said John B. Strong before the said superior court; which fact your committee do not think ought to be urged against minor heirs, without a guardian, living at a remote distance from these lands.

In the year 1835 these heirs-at-law sold and conveyed the said tract of land to William Marvin, the petitioner, who, under the impression that the provisions of the act of May 26, 1830, were still open to him, in the month of June, 1843, filed his petition in the superior court of the district of east Florida, and obtained a decree in his favor for the lands in question; but, on appeal to the Supreme Court of the United States, the said decree was reversed, for want of jurisdiction in the court below; so that the petitioner has no remedy or relief other than in appeal to the justice of Congress.

The committee find that at the first and second sessions of the 29th

Congress the Senate Committee on Private Land Claims reported favorably upon the said claim, and recommended the same for confirmation.

Without discussing the legal effect of the 8th article of the treaty of 1819, the committee are satisfied, from the decision of the superior court of Florida, in 1843, that this claim would have been adjudicated in favor of Segui, or his legal representatives, had the same been presented to that court within the time limited by the said acts of May 23, 1828, and May 26, 1830.

Your committee feeling that justice demands of Congress the confirmation of this claim to William Marvin, as the legal representative of the said Bernardo Segui, they have directed me to report the accompanying bill and recommend its passage.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 97.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1858.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 80.]

The Committee on Private Land Claims, to whom was referred the bill for the relief of the heirs and legal representatives of Oliver Landry, of the State of Louisiana, have had the same under consideration, and ask leave to make the following report:

That in the year 1787 Oliver Landry petitioned the governor general of the province of Louisiana, to grant him, on the Bayou Tortue, five arpents of land, "more or less, if it could be found," bounded below by René Trahan, and on the other side by Claude Broussard, with the ordinary depth; the quantity to be ascertained by the surveyor of the King. In accordance with the prayer of the petitioner, Estevan Miro, governor of Louisiana, issued on the 2d January, 1788, an order of survey, directed to Carlos Zavan Trudeau, which, accompanied by the petition, was filed in the year 1812, by the said Oliver Landry, in order to establish his claim with the register and receiver of the land office at Opelouses, then acting as commissioners on claims for lands in the western district of the State of Louisiana, under an act of Congress approved 10th March, 1812. But in the notice of the claim filed before the register and receiver, the words "more or less" were omitted, and the claim was favorably reported for "200 superficial arpents, viz: five arpents front by forty deep, situated on the Bayou Tortue, in the county of Attakapas, bounded on one side by land of René Trahan, and on the other by that of Claude Broussard.—(See American State Papers, Public Lands, vol. 3, page 155, case number 40.)

In consequence of this error upon the part of the claimant, the above stated action of the register and receiver, and its confirmation by Congress in the year 1819, the surveyor general of the United States for Louisiana refused to put the purchasers under Landry in possession of more land than five arpents front, by forty arpents deep, as will appear by the following communication from him to C. J. Cabell, deputy surveyor St. Martinsville, Louisiana:

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, La., March 30, 1855.

SIR: A few days since Governor A. Mouton represented, in person, to this office, that you had surveyed the claim of Oliver Landry, (R & R. report, No. 40, in T. 10 S., R. 5 E.,) with a front of five arpents only; and having bounded it below by the claim of Joseph Landry, (R. & R. No. 126,) so as to include the buildings upon the tract, had left an intervening space between this claim and that of René Trahan, (A. 1,231,) which you would survey as public land, and return wholly or in part as swamp, enuring to the State. Such a precedure, he alleged, would be injurious to him and others, not only because of its requiring the purchase of lands to which the United States had, in his opinion, no title, but also because of its affording an opportunity to others to enter the lands which he and his co-proprietors have long held in possession; and he, therefore, prayed that instructions should be given to you to survey the whole space between the rear line of René Trahan and the upper side of Joseph Landry, for the claim of Oliver Landry, regardless of the front which it would thus receive. To sustain his wish, he submitted the requette of Landry, dated 27th August, 1787, (copy enclosed,) and the usual order of survey thereupon issued.

The requette described the tract sought as having a front of "five arpents, more or less," "if it could be found," bounded below by René Trahan, and on the other side by "Claude Broussard." But in the notice of the claim, filed before the register and receiver, the saving words "more or less" were omitted, and the front prayed was confined to five arpents; and to this extent only has it been favorably reported, confirmed, and surveyed by you properly.

But in view of the long tenure of Governor Mouton and others, maintained under a succession of *bona fide* sales, dating back many years, made by Oliver Landry and his vendees, in full belief that they were the recognized owners of the whole front between the lines of Trahan & Broussard, I am of opinion that the intervening space between the upper line of Oliver Landry, as surveyed by you, and the back line of René Trahan, should not be subdivided and reported as public lands; but that it should be represented as "claimed by Oliver Landry," without assigning any title to it, as is usual in cases when tracts have long been held as private property, although no confirmation can be found for them. This would leave the claimants of the tract to seek from the legislative branch of the government, the recognition of the validity of the claim to which its equity fully entitles it.

* * * * * * * *

Respectfully, your obedient servant,

W. J. McCULLOH,
Surveyor General of Louisiana.

C. J. CABELL, Esq., *Deputy Surveyor,*
St. Martinsville, Louisiana.

Your committee are of opinion that all the land between the grants of Trahan & Broussard was asked from and granted by the Spanish government, and that the confirmation by the United States was valid in law for the whole tract contained between these two boundaries, notwithstanding the statement in the confirmation that this tract was only five arpents in front and contained only two hundred superficial arpents. The principle that statements of quantity in the description of lands must yield to designation of fixed limits, would clearly apply to the case in question; but as there seems to be a dispute about the rights of the petitioners in the office of the public surveyors, your committee deem it not unreasonable to quiet the title by legislation instead of driving the petitioners to the necessity of litigation in support of their rights.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 98.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1858.—Ordered to be printed.

Mr. FITCH made the following

REPORT.

[To accompany Bill S. 181.]

The Committee on Indian Affairs, to whom was referred the memorial of Anson Dart, have had the same under consideration, and report:

That the papers in this case show some of Mr. Dart's claims founded in "equity and justice," and they show likewise a charge against him by J. H. Nesmith, present superintendent of Indian affairs in Oregon, of misapplication of certain Indian goods. The charge is made *officially*, with a proffer to prove it. Dart denies it, and in such manner as to give probability to the denial. The charge should be investigated, and, if not sustained, Dart paid whatever may be found due him. If the charge is true, "equity and justice" would allow him nothing.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 99.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1858.—Ordered to be printed.

Mr. DURKEE submitted the following

REPORT.

The Committee on Private Land Claims, to whom was referred the petition of Thomas Henderson, asking to be allowed the right to enter a certain tract of land in the State of Michigan, have had the same under consideration, and submit the following report:

That the petitioner, in the year 1855, claimed to have purchased the back concession of front concession No. 259, in the township of Ecoise, county of Wayne, State of Michigan, from one Peter Rivard, who, as petitioner alleges, represented himself as heir of Isaac Gagnier, to whom the front concession had been confirmed, and who was entitled, under an act of Congress approved April 23, 1812, to donation of the rear concession, but had failed to make application therefor within the time prescribed by said act.

The committee find, that on the 25th June, 1846, Joseph Campan, petitioned Congress for a confirmation of his title to the identical tract of land now claimed by Thomas Henderson, and which he alleged he had purchased from the heirs of Isaac Gagnier, in the year 1823, and had retained possession ever since. The Senate Committee on Private Land Claims, to whom was referred the petition of Joseph Campan, returned it to the Senate without action, and was discharged from its further consideration.

There is no proof that Rivard represented himself as the petitioner alleges, as heir of Isaac Gagnier; and from the papers submitted to your committee, no claim of title to Thomas Henderson from the original owner of front concession, No. 259, can be traced. In consequence thereof, and the land in question having been reserved from sale and supposed to be still wanted for the original purpose of its reservation, it would be improper to allow the petitioner to enter it, and your committee therefore report adversely to the prayer, and ask to be discharged from the further consideration of said petition.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 100.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1858.—Ordered to be printed.

Mr. BIGGS submitted the following

REPORT.

The Committee on Private Land Claims, to whom was referred the petition of Camille St. Amand and others, praying the passage of an act reinstating their entries of certain lands in the State of Louisiana, have had the same under consideration, and ask leave to make the following report:

That the entries by Camille St. Amand and others as pre-emptors of certain lands in township 14 south, of range 20 east, southeastern district of Louisiana, were cancelled in the year 1856 by the General Land Office, for the reason, as stated by the petitioners, that their settlements were made prior to the survey of said lands, this being in violation of the 10th section of the pre-emption act approved September 4, 1841, which only allows pre-emption settlements upon lands which may have been surveyed prior to the time when settled upon. It also appears that the lands in question are within the limits of the grant made to the "Opelousas and Great Western Railroad" by act of Congress approved June 3, 1856, and in conflict with the claim of the children of Paul Toups, which was confirmed to Ambrose Lanfear by act of Congress approved August 18, 1856.

The petitioners having clearly acquired no right of pre-emption under the pre-emption law of September 4, 1841, and the United States having relinquished by the above cited acts their interest in said lands, your committee are of the opinion that the relief asked for cannot, and should not, be granted, and report adversely to the prayer of the petitioners, and ask to be discharged from the further consideration thereof.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 101.

IN THE SENATE OF THE UNITED STATES.

MARCH 3, 1858.—Ordered to be printed.

Mr. HAMMOND made the following

REPORT.

[To accompany Joint Resolution No. 20.]

The Committee on Naval Affairs, to whom was referred the petition of Lieutenant William F. Lovell, of the United States navy, praying that additional compensation may be paid to the officers and seamen who accompanied the expedition in search of Dr. Kane, have had the same under consideration, and report:

That the expedition was peculiar, and required an outfit of stores, provisions, clothing, &c., suited to the extreme regions of the Arctic seas, and, in a large degree, unsuited for the ordinary service of the navy.

It went on its errand of humanity, uncertain how long it would be absent in the inhospitable regions to which it was sent. The cruise was expected to occupy a long time. Large supplies were laid in, and large expenditures were consequently thrown upon the officers, which the fortunately unexpected termination of the cruise rendered unavailable.

The expedition, learning the safety of Dr. Kane, returned to the United States with a large proportion unexpended of the stores and clothing, &c., which they had been compelled to lay in, in anticipation of a long voyage, and upon these loss was necessarily sustained.

The committee, believing that the officers who engaged willingly and gallantly in this arduous, dangerous, and suffering expedition of humanity should not be burdened with the loss which has thus resulted from the peculiar character and nature of the expedition upon which they were sent, recommend the allowance of increased compensation as an indemnity to these officers, and herewith offer a joint resolution for their relief, and recommend its passage.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 102.

IN THE SENATE OF THE UNITED STATES.

MARCH 4, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. (C. of C.) 183.]

The Committee on Claims, to whom was referred the report of the Court of Claims in favor of the claim of Charner T. Scaife, administrator of Gilbert Stalker, report:

This claim arises as follows, viz: In December 1840, Captain Ogden, quartermaster United States army, chartered the steamboat "James Adams" at $2,500 per month. On the 26th April the boat was discharged. She was subsequently chartered, at different times, at $2,000 per month, and at $1,800 per month, all for service on the Florida coast during the Seminole war. The amount chargeable on the charter parties was duly paid.

The present claim is for an additional allowance of $500 per month, from the 1st August, 1841, to 9th July, 1842, founded on a parole contract between the owner of the boat and General Worth, the commanding officer in Florida, on the part of the government. General Worth states that he has a distinct recollection of the circumstances, and of his assurance to Mr. Stalker "that if he continued the vessel in the public service, to which the vessel was, at that time indispensable, he should be paid an amount equal to his original contract." This promise, Captain Ogden, assistant quartermaster, says, "was predicated upon the unusually severe and destructive service required of the boat." Captain Ogden adds: "The rapid deterioration of the steamer, from the unusual service required of it, the promise of General Worth of an increased payment on that account, and the fact that Mr. Stalker would certainly have withdrawn his boat from the service if he had not expected the increase, &c.," renders the payment a matter of common justice.

The Court of Claims decide that, "as the service, to procure which the promise was made, was not required by the charter party, it cannot be said that the promise was without consideration. Neither can it be said that the promise was made without authority, it having been made by the commanding officer, in the presence of the quartermaster. It would, no doubt, have been more regular if the general

had caused a new charter party to be executed; but still, as the unusual service was performed in consequence of the promise, it seems to be proper that the government should pay for it."

The committee concur in these views, and report a bill.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 103.

IN THE SENATE OF THE UNITED STATES.

MARCH 4, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

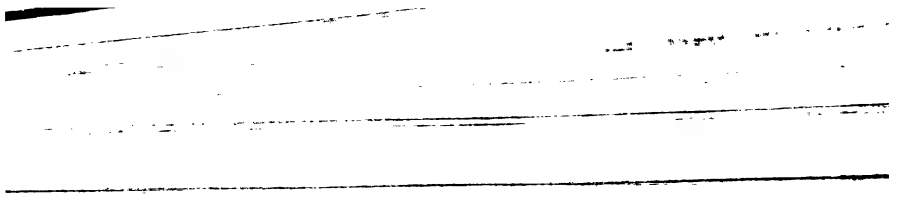
[To accompany Bill S. (C. of C.) No 184.]

The Committee on Claims, to whom was referred the report of the Court of Claims in the case of John Robb, report:

The claimant was, during the years 1832 and 1833, chief clerk of the War Department, and was, at various times during those years, appointed by the President Acting Secretary of War during the temporary sickness or absence of the Secretary. He claims to be entitled to compensation for this extra service at the rate of $6,000 per annum, in addition to his salary as chief clerk, and the opinion of the Court of Claims is in favor of the allowance as claimed.

The committee, upon a consideration of the case, have come to the conclusion that the claimant is not entitled to receive both the salaries—that of head of the department and that of chief clerk—at the same time.

The chief clerk receives his appointment from, and holds his office at, the will of the Secretary; and if the same individual can be regarded as holding both offices at the same time, it would seem to involve the incongruity of a head of a department holding a subordinate appointment from himself. The extent to which the committee are disposed to go is, to allow at the rate of $6,000 per annum during the time the claimant performed the duty of Acting Secretary of War, deducting whatever sums he may have received during the same time as chief clerk; and they report a bill in accordance with these views.



35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 104.

IN THE SENATE OF THE UNITED STATES.

MARCH 4, 1858.—Ordered to be printed.

Mr. BAYARD submitted the following

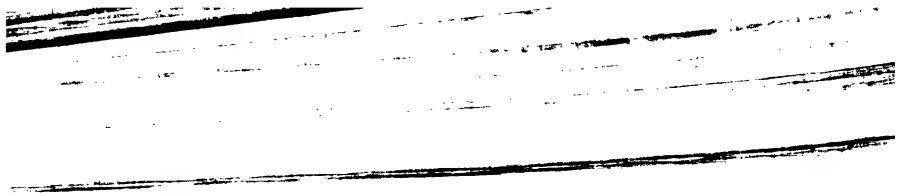
REPORT.

The Senate referred to the Committee on the Judiciary, on the 25th ultimo, the following resolution:

Resolved, That the question of the admission of James Shields to a seat in this body as a senator from the State of Minnesota be referred to the Judiciary Committee, with instructions to inquire whether or not Minnesota is a State of the Union under the Constitution and laws.

Having considered the question as to which they were, by the foregoing resolution, instructed to inquire, the committee have *unanimously* adopted the following resolution:

Resolved, That Minnesota is not a State of the Union under the Constitution and laws.



35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 105.

IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1858.—Ordered to be printed.

Mr. BENJAMIN made the following

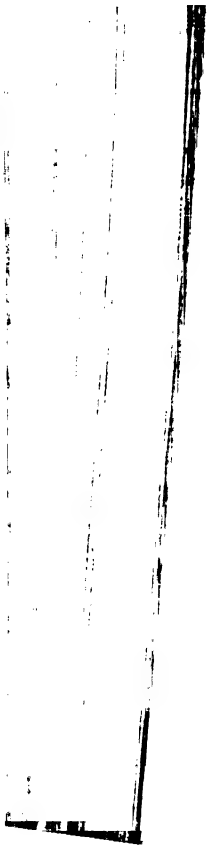
REPORT.

[To accompany Bill S. 185.]

The Committee on Private Land Claims, to whom was referred the petition of Anna M. E. Ring, praying that a land warrant may be issued to herself and sisters in lieu of one issued to her father, has had the same under consideration, and asks leave to submit the following report:

That on the 18th July, 1855, a land warrant for one hundred and sixty acres of land, numbered 3172, was issued to David A. Ring for military services during the war of 1812. That prior to the receipt of said warrant, and while (as the petitioner represents) in a dying condition, the said David A. Ring executed an assignment of his right to said warrant to his four daughters, viz: Anna M. E. Ring, Louisa M. Ring, Cordelia E. Ring, and Sarah J. De Lannoy.

The committee finds that the 4th section of an act entitled "An act granting bounty land to certain officers and soldiers, who have been engaged in the military service of the United States," approved 28th September, 1850, declares all assignments made prior to the issue of a warrant to be null and void; and the assignment of Ring to his daughters having been made prior to the issue of his warrant, the location thereof was lawfully refused by the Commissioner of the General Land Office. This is, however, considered a meritorious case, and the committee has unanimously agreed to report a bill for the relief of the petitioner and her sisters, which is herewith submitted and its passage recommended.



35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 106.

IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1858.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 186.]

The Committee on Private Land Claims, to whom was referred the claim of B. E. Edwards to certain land in New Mexico, have had the same under consideration, and adopt and submit the following report, heretofore made by the committee upon this case:

On the 16th day of August, 1847, the land commissioners for the county of Bexar, and State of Texas, issued to one Andres Flores a certificate for 640 acres of land as a "head right," of which the following is a copy:

"STATE OF TEXAS, } 640 acres, No. 444, second class.
County of Bexar. }

This is to certify that Andres Flores has appeared before us, the board of land commissioners for said county, and proved, according to law, that he arrived in this State previous to the 1st of October, 1837, and that he is a single man, and has resided in the same three years, and performed all the duties required of him as a citizen, and never having received a certificate for the quantity of land now applied for, he is entitled to six hundred and forty acres of land.

Given under our hands and the seal of the county court at San An-
[L. S.] tonio, this 16th day of August, A. D. 1847.

THOMAS WHITEHEAD,
Chief Justice and ex-officio Pres't Board Land Comm'rs.
JAMES B. LEE, } *Commissioners.*
WM. SMALL, }

Attest: THOS. H. O. S. ADDICKS,
Cl'k County court Bexar county, ex-officio Cl'k B. L. Comm'rs.
By BEN. E. EDWARDS, *Deputy.*"

The said Andres Flores, by deed dated the 17th day of August, 1847, conveyed all his right and title to said certificate (No. 444,) to Benjamin E. Edwards, who caused the said certificate to be located upon a certain tract of land within the Bexar land district, and a survey thereof to be made on the 8th of September, 1849, as appears from a

duly certified copy of the original survey, which is in the words and figures following, to wit:

"STATE OF TEXAS, } *Survey No.* 16.
District of Bexar. }

"Field notes of a survey of 640 acres of land made for Benjamin E. Edwards, assignor of Andres Flores, it being the land to which he is entitled by virtue of a certificate No. 444, 2d class, for 640 acres of land, issued by the board of commissioners of Bexar county to Andres Flores, dated August 16, 1847, said survey containing a salt lake or saline, known as the 'Salina de San Andres' or 'Salina del Cerro Redondo,' and lying between the Sacramento and Organ mountains. Said survey is No. 16, in section No. 15, situated on the east side of, and about five miles from, the Cerro Redondo, and N. 6° E., 57 miles from the springs known as San Nicholas Springs, beginning at a point N. 3½° E. 116 miles, 1,140 varas from a stake set at the ferry north of the town of El Passo del Norte, on the road between said town and Santa Fé, being the southwest corner of survey No. 1, made by M. B. Hays, a stake and mound for southwest corner of this survey; thence N. 1¼° E., 1,100 varas across the wagon road to said saline; salado, marked E, for northwest corner of this survey, from which a mesquite, two inches diameter, bears N. 48½°, E. 16 varas; thence S. 88¾° E. 1,900 varas to a post marked $\frac{\times}{\div}$ for northeast corner; thence S. 1¼°, W. 1,900 varas, to a stake and mound for southeast corner of this survey; thence N. 88¾° W. 1,900 varas, to the place of beginning, bearing marked $\frac{=}{=}$.

"Surveyed September 8th, 1849.

"JAS. B. ROBERTS, } *Chain-carriers.*
"JAS. R. SHIPMAN, }

"I, R. S. Howard, deputy surveyor of Bexar district, do hereby certify that the survey designated by the foregoing plat and field notes was made according to law; and that the limits, boundaries, and corners of the same, together with the marks, natural and artificial, are truly described therein.

"R. S. HOWARD,
"*Deputy Surveyor, Bexar District.*"

"SAN ANTONIO, *November* 30, 1849.

"I, James S. McDonald, district surveyor of Bexar district, do hereby certify that I have examined the foregoing plat and field notes, and find them correct, and that they are recorded in my office in Book A, No. 5, page 257.

"J. S. McDONALD,
"*District Surveyor of Bexar District.*"

The lands embraced within the above plat and survey are within the Territory of New Mexico, and the claimant asks Congress to confirm his title to the said tract of land. To understand fully this case,

it is necessary to refer briefly to the history of that part of the Territory in which this tract of land is situate.

By the act of congress of the republic of Texas, approved December 19, 1836, the western boundary of Texas was declared to extend to the Rio Grande river. By a map prepared under the direction of the War Office, from the most reliable authorities, in 1844, the Rio Grande, also, is laid down as the western boundary of Texas. After the annexation of Texas to the United States, this government recognized and maintained the boundaries of Texas as defined by the said act of congress of the republic of Texas, of December 19, 1836. Under and by virtue of the act of Congress, approved September 9, 1850, the district of country in which this land is situate was acquired by the general government from the State of Texas. The action of the government subsequent to the annexation of Texas has conceded that the jurisdiction of Texas included the territory in question prior to the relinquishment of the same to the United States; so that, from the date of the certificate from the board of commissioners to a period beyond the location and survey of this tract of land, this part of the territory of the State of Texas was subject to location and settlement under authority from said State.

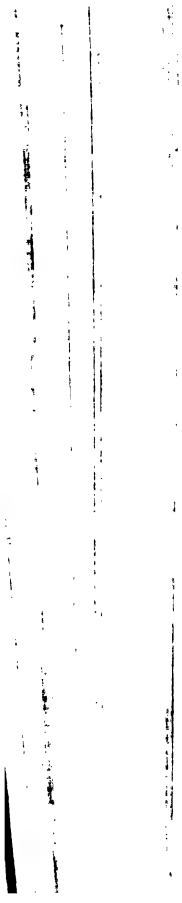
The committee, therefore, find that the State of Texas, having the jurisdiction, did, by its proper officers, issue a certificate of location, No. 444, to Andres Flores, and that the same was located and surveyed prior to the relinquishment of title by the State of Texas to the general government, and that the claimant only required a patent from the State of Texas, to which he was legally entitled, to form a complete and perfect title to the said tract of land.

The legislature of Texas, by an act approved December 2, 1850, required the commissioner of the general land office of the State of Texas to issue patents for certain lands therein named, included in which was the tract of land in question. But the State of Texas having, prior to the passage of the said act, relinquished her title to the territory in which this tract of land is situate, a patent issued under the said act would have been of no validity, for the title that had theretofore been in the State of Texas had passed to the government of the United States.

The claimant had an equitable or inchoate title under the State of Texas, and the question whether this government is bound by law and good faith to confirm such inchoate titles in a territory acquired from another power, which such power, under the laws, usages, and customs thereof, would have confirmed had such territory continued in their possession, is a question so well settled both by the laws of nations and the decisions of the Supreme Court of the United States, (see 4 Peters, 512; 7 Peters, 87, and 10 Peters, 330,) that your committee do not deem it necessary to discuss the question.

The government of the United States, by virtue of said act, approved September 9, 1850, having become possessed of the territory in which the tract of land is situate, is therefore bound to confirm the title of the petitioner to the same extent as the State of Texas would have done had she continued in possession thereof.

The committee therefore report back the bill without amendment, and respectfully recommend its passage.



35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 107.

IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 187.]

The Committee on Claims, to whom was referred the petition of A. W. McPherson, beg leave to report:

That on the 9th June, 1855, the Secretary of the Interior wrote to the marshal of the district of California, by which he was authorized "to procure such other accommodations (for the courts of the United States) upon the most favorable terms to the United States, to be fully approved by the judge and the United States attorney, and to transmit to the department a copy of the agreement with the approval of the officers endorsed on it."

Under these instructions, the marshal entered into a lease and agreement with petitioner for the rent of a building and for furnishing the same separately. The contract of lease was confirmed by the Secretary, but the account for the furniture, though certified to in due form by the judges of the circuit and district courts, and by the district attorney and marshal of the United States, was refused payment on the ground that there was no authority to pay in the department, under the act of February 26, 1853, which enacts that "a marshal shall not incur an expense of more than twenty dollars for any one year for furnishing," &c.

By the act of 28th September, 1850, the laws of the United States were made of force in California, which was divided into two districts, and, by the fourth section, the judge of the northern district was directed to hold two regular sessions of his court in the city of San Francisco.

By the act of 2d March, 1855, the judge of the circuit court was directed to hold a term of his court on the first Monday of July in each and every year, with power to hold special terms in said city, at such places "as the marshal of the United States for the northern district of California shall procure for the purpose, under the direction of said judge."

It appears that under the authority of these acts and the letter of

instructions from the Secretary to the marshal, the house rented from the petitioner was furnished by him under an agreement to pay for the same, and the accounts for the price of the same are certified to, as above recited, by the proper officers.

These accounts are for the sums of $9,085 95 and $9,012 20; in the aggregate, $18,098 15. The prices charged for the articles furnished appear to your committee to be very extravagant, and they are, therefore, unwilling to recommend the payment of the amount claimed. As the United States have had the use of said furniture, and are still using the same, they think that the petitioner is entitled to a compensation for the reasonable value of the same, and they therefore recommend the adoption of the accompanying bill.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 108.

IN THE SENATE OF THE UNITED STATES.

MARCH 9, 1858.—Ordered to be printed.

Mr. FESSENDEN made the following

REPORT.

[To accompany Bill S. 188.]

The Committee on Finance, to whom was referred the petition of Edward N. Kent, with the accompanying papers, report:

That the petitioner is the inventor of an "apparatus for separating gold and other precious metals," which has been secured to him by letters patent, dated December 4, 1855, and February 26, 1856, respectively.

Mr. Butterworth, superintendent of the assay office at New York, in a letter to the chairman of your committee, dated January 20, 1857, says:

"In the operations of melting and refining, a considerable portion of the precious metals will be temporarily absorbed by the crucibles and fluxes, and mixed with the ashes of the furnace and the sweepings of the floors. A large amount of material thus accumulates, from which, by some method, the precious metals must be recovered. The amount thus recovered at this office is about $200,000 per year. A portion still remains, however, mixed with the materials which have been subjected to the processes employed. This residuum is technically termed '*sweep*,' and it has been the practice of the government to sell this sweep to the smelters of this country and of Europe."

It has been proved to your committee that the method employed in minting operations, previously to the invention and employment of Mr. Kent's apparatus, for the purpose of recovering the precious metals thus accumulated, was exceedingly imperfect and defective. It was very prejudicial to the health of persons exposed to the operation, by reason of the large quantities of fine dust liberated in sifting—so much so, in one instance, as to cause death. It was expensive, requiring a large amount of labor, crucibles, and fluxes; and it occasioned a very considerable per centage of yearly loss in the "sweep" sold, namely, about ten to twelve cents per pound.

Mr. Kent's apparatus was introduced, at his request, into the assay office at New York, in July, 1855, with a view of testing its merits.

It was designed by the inventor to lessen, or avoid, all the difficulties above stated, particularly by recovering a much larger portion of the precious metals from their admixture with the substances, so to impoverish the *sweep* as to diminish the per centage of loss on its sale.

The apparatus proved so successful, in all particulars, as to induce the director of the mint at Philadelphia to direct an examination and report upon its merits. The report was of so favorable a character as to lead to its subsequent introduction, with the approval of the Secretary of the Treasury, into the principal minting establishments of the United States, in all of which it has since continued in constant use.

The testimony furnished by Mr. Kent, which accompanies his petition and this report, comes principally from the officers of the mint at Philadelphia and the assay office at New York, and establishes, to the entire satisfaction of your committee, the great importance of the apparatus in minting operations. It accomplishes all the purposes for which it was designed.

Mr. Butterworth, in the communication before cited, says:

"Mr. Kent's invention effects a saving of two-thirds the labor required by the old process; it supersedes almost entirely the expensive operations of fluxing, owing to the thoroughness with which it separates the precious metals from the sweeps; and, by impoverishing the sweeps to one-tenth their former value, it effects a very material diminution of the loss on their sale in the market. I am satisfied that the saving to the government, effected by Mr. Kent's invention, at this office alone, is about $6,000 per year."

The evidence is equally conclusive that, by avoiding the dry sifting, this apparatus relieves the workmen from all the deleterious effects upon health produced by the old process.

By calculations made at the mint and assay office, there can be no reasonable doubt that the saving to the government effected by Mr. Kent's apparatus, at those two establishments, will amount, in the fourteen years of his patent, to a sum exceeding $120,000. Estimating an equal saving at the other establishments, which the witnesses assume to be a fair basis of calculation, the whole benefit derived by the government from this important invention, during the continuance of the patent, will exceed $240,000.

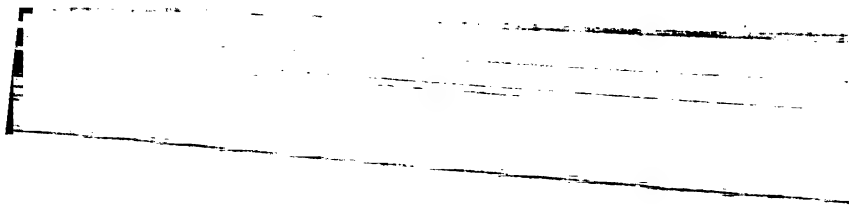
It is quite obvious that the use of Mr. Kent's apparatus is of too much importance and value to be dispensed with in the minting operations of the government. It is equally obvious that it can only be used legally with his consent. Were it otherwise, there is no reason why the United States should not afford him a just and reasonable compensation for great benefits received through his labor and ingenuity. One of the witnesses (Mr. Terry) who has been connected with the assay office from its commencement, says in a letter to Mr. Kent: "Your apparatus is constructed on the soundest principles of mechanical and chemical science, and is, I think, hardly susceptible of much improvement."

All the principal officers connected with both the establishments before named concur in the opinion that Mr. Kent is honestly entitled to remuneration, and that the continued use of his apparatus in

all the minting operations of the United States cannot be dispensed with.

The case is not without precedent. The sum of $2,500 was heretofore appropriated by Congress for the purchase of the perpetual right to use, in the mint and branch mints of the United States, an apparatus invented by Rufus Tyler for counting coins.—(U. S. Statutes, vol. 5, p. 688.)

The petitioner thinks that he is entitled to receive from the government the amount of $20,000 for the perpetual right to use his apparatus in all the minting establishments of the United States. Taking into consideration the great benefits conferred, the fact that this sum is only one-twelfth of the amount which will be actually saved to the government through his instrumentality, and the very limited compensation which he will be likely to receive from other quarters, your committee think his demand not unreasonable, and accordingly report a bill for his relief.



35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 109.

IN THE SENATE OF THE UNITED STATES.

MARCH 9, 1858.—Ordered to be printed.

Mr. SIMMONS made the following

REPORT.

[To accompany Bill S. 189.]

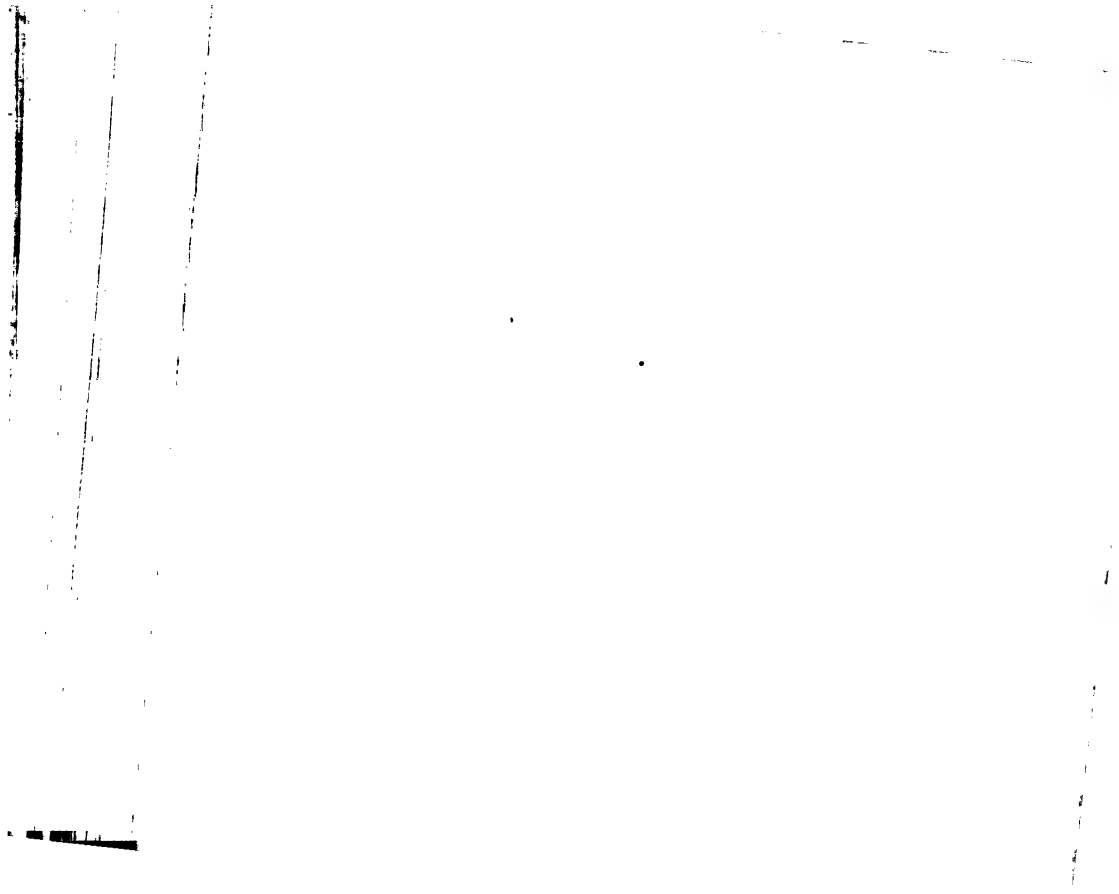
The Committee on Claims, to whom was referred the petition of Rufus Dwinel, submit the following report:

The petitioner has legal title to the amount which was due to James Thomas under a contract with the Post Office Department, duly executed and under seal.

The question of how much was due under said contract was adjudicated and tried before the circuit court of the United States for the District of Columbia, at the March term, 1841. Upon the testimony produced by the parties and the argument of counsel for the contractor and the government, the jury returned a verdict in favor of the said James Thomas, or his surviving partner, for $13,037 22, with interest thereon from the 4th March, 1837, the time when the service under the contract was completed, and the amount was all due and payment demanded; and the same verdict was so recorded, and judgment not appealed from. That it does not appear that either the counsel or court suggested to the jury that it would be more proper to include the interest, and return a verdict for a sum which would include both principal and interest as the amount of the damage awarded by them as declared by the verdict, as is customary in such cases.

A certificate of nine of the jurors, signed after the rendition of this verdict, declare, that the jury were unanimous in their judgment upon the matter, and that they supposed that both principal and interest would be paid, as therein declared.

The principal was paid under an act of Congress, approved March, 1852, and the petitioner prays for the payment of the interest from the 4th of March, 1837, according to the verdict of the jury; and the committee herewith report a bill for his relief for the amount of interest to the time when the principal was paid, according to the verdict of the jury, and recommend its passage.



35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 110.

IN THE SENATE OF THE UNITED STATES.

MARCH 9, 1858.—Ordered to be printed.

Mr. HARLAN submitted the following

REPORT.

The Committee on Public Lands, to whom was referred the petition of citizens of Taylor county, in the State of Iowa, praying to be allowed to enter certain lands on which they had settled, at the minimum price, have instructed me to report that they have had the same under consideration, and have conferred with the Commissioner of the General Land Office in relation thereto, (whose letter is hereto appended and made a part of this report,) from which it will appear that no legislation on the subject is at present necessary; they, therefore, report such petition back to the Senate, and ask that the committee be discharged from the further consideration of the subject.

GENERAL LAND OFFICE,
February 24, 1858.

SIR: I have examined the petition of certain citizens of Taylor county, Iowa, relative to their pre-emption claims in township sixty-nine, within the fifteen mile limits of the Burlington and Missouri River Railroad, and, with reference thereto, have the honor to state that a large portion of said township, embraced in Taylor county, lies *outside* of the fifteen mile limits of the above named road, and has not been withdrawn from pre-emption.

With reference to the pre-emption claims which have been made upon sub-divisions of land lying *inside* of the fifteen mile limits of the railroad, I have to state that many of them will, it is believed, be adjudicated by this office in favor of the settlers, under existing laws—1st. Where settlements were made on even-numbered sections within said limits *prior* to the filing of the certified maps of survey of the route in the district office, the claims will be held good; provided, of course, all the requirements of the act of 4th September, 1841, are met. 2d. Where settlements were made on the *odd-numbered* sections outside of the ——, and within the fifteen mile limits, prior to the 10th day of September, 1856, the claims will likewise be held good.

Claims upon the even and odd-numbered sections based upon settlements made subsequent to the foregoing periods, respectively, cannot be recognized by this office, for the reasons—1st. By my instructions *all* the lands within railroad limits were *absolutely* withdrawn from pre-emption settlement from and after the date of the filing in the district offices of the certified maps of survey of the several routes. 2d. On the 10th of September, 1856, official notification was given to this office of the selection, by the State agent, of the odd-numbered sections outside of the six and within the fifteen mile limits of the different railroad routes, for the benefit of the State, in pursuance of the act of 15th May, 1856; and after said selection, the vacant lands in said odd-numbered sections were no longer subject to pre-emption settlement.

As the petitioners hereinbefore alluded to have not specified the tracts of land upon which they have settled, I am unable to report *what* new legislation, if any, is needed for their relief. No doubt many honest settlers have made improvements on the even-numbered sections of land within railroad limits since the absolute withdrawal, for whom this office cannot provide relief, and whose claims are meritorious subjects of legislation.

Herewith is returned the petition under consideration.

With great respect, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Hon. JAMES HARLAN,
United States Senate.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No 111.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1858.—Ordered to be printed.

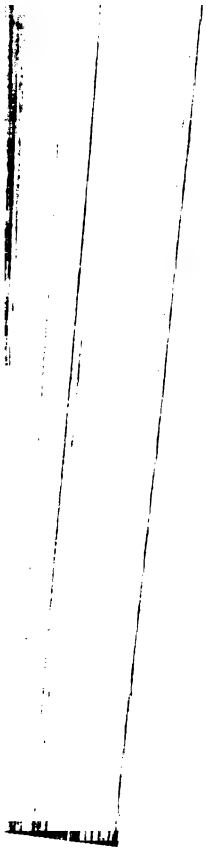
Mr. DURKEE made the following

REPORT.

[To accompany Bill S. 190.]

The Committee on Private Land Claims, to whom was referred the petition of Daniel Whitney, of Green Bay, State of Wisconsin, praying the confirmation of his title to a certain tract of land, have had the same under consideration, and ask leave to make the following report:

That in the year 1823 the commissioners appointed to ascertain and decide upon claims to land in the Territory of Michigan, under an act of Congress approved 21st February, 1823, did confirm to one Pierre Grignon a certain "piece of ground lying and being on the west side of Fox river, Green Bay, immediately below the first creek that empties into said river, about fifteen acres in front on the said river, and extending back indefinitely."—(See American State Papers, on Public Lands, volume 4, page 721.) That the second section of an act of Congress entitled "An act to confirm certain claims to lands in the Territory of Michigan," signed April 17, 1828, did approve of the confirmation of the foregoing claim made by the commissioners, and contained in volume 1 of their report. But the third section of said act provided that the confirmations under it should not extend to any lands occupied by the United States for military purposes; and the claim of Pierre Grignon being within the limits of the old reserve for Fort Howard, was held by the Commissioner of the General Land Office to be without confirmation. The original ground which excluded this claim from confirmation no longer exists, as the Fort Howard military reservation has been abandoned by the War Department for military purposes; and your committee is therefore of the opinion that the land in question ought to be granted by Congress to Pierre Grignon, or his legal representatives. The petitioner, Daniel Whitney, has represented himself to be the assignee of Pierre Grignon, but has failed to submit any evidence in support of such pretension. In view of this, and of the impropriety of Congress deciding between adverse claimants, a bill is reported for the relief of the original confirmee, or his legal representatives, and its passage recommended.



35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 112.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1858.—Ordered to be printed.

Mr. BROWN made the following

REPORT.

[To accompany Bill S. 191.]

The Committee on the District of Columbia, to whom were referred various memorials and petitions from the corporate authorities, the trustees of the public schools, and citizens of the city of Washington, praying congressional aid for the public schools in said city, have had the same under consideration, and report:

First. That there are no unsold lots of material value in the city of Washington, and therefore it is useless to deny or grant so much of the prayer of the petitioners as seeks a donation of these lots to the public schools of said city.

Second. The policy of granting lands in aid of public schools in the new States and Territories appears to your committee to have been eminently wise and free from all constitutional objections. But when it is proposed, as by these memorialists, to extend that policy to the District of Columbia, new and grave objections arise. These objections are not only to the expediency, but, in the judgment of many, to the constitutionality of the proposed measure. Without discussing the question, your committee report that, in their opinion, it is not proper, at this time, to make a grant of public lands to aid the public schools in the city of Washington.

Third. The proposition to appropriate money in aid of these schools has engaged the attention of the committee.

It appears, according to the best data attainable by your committee, that the government owns about one-half in value of all the real estate in the city of Washington. On this it pays no taxes. The citizens are heavily taxed for the various purposes of city government, and the United States makes large appropriations for purposes of its own within said city. While the city appropriates largely from a common treasury for the support of schools, the United States never has appropriated a dollar for that object.

There are in the city of Washington more than five thousand children, between the ages of five and eighteen years, who attend no

school. Of these, it is believed, more than two-thirds have been attracted to this point by the government. They are the children of persons in the service of the United States, many of whom have no taxable property in the city, and very little anywhere else.

Of these five thousand who attend no school, one-half at least, perhaps more, are the children of parents too poor to bear the expense of their education, and they must grow up in ignorance, unless educated at the public expense. It would seem hardly fair to throw them as an exclusive burden on the private property-holders of this city.

There are in the public schools of the city two thousand four hundred pupils, besides three thousand two hundred in the private schools. The public schools are maintained mainly out of the city treasury, there being paid for their support an annual sum varying from twenty to twenty-five thousand dollars.

Your committee has found a healthy state of public sentiment in the city on the subject of education; many of the largest property-holders not only consenting to, but urging, an additional special tax for school purposes. The assessed value of property in the city is a fraction over twenty-six millions of dollars, yielding a revenue, at the present rate of taxation, of one hundred and ninety-five thousand dollars, about nine per cent. of which is appropriated to the support of public schools. The city has a permanent school fund invested which yields three thousand dollars per annum; and the poll tax, amounting to about five thousand five hundred dollars annually, goes also into the school fund. It is now proposed to levy an additional tax of ten cents in the hundred dollars for the special purpose of aiding the schools. This will raise about twenty-six thousand dollars per annum, which, added to the present sum expended, will be equal say to fifty thousand dollars a year. If the city was well supplied with school houses, this sum would go far towards meeting the desired object of placing a school within the reach of every child in the city; but there is, unfortunately, a great deficiency in school accommodations.

In view of all these facts, your committee think it expedient for Congress to pass an act surrendering to the school fund of the city the fines and forfeitures in the district courts, and hereafter to be collected, until the same shall reach fifty thousand dollars, the money to be applied to the erection of permanent school houses.

The fines and forfeitures vary in amount per annum, according to the number and magnitude of offences against the criminal laws. In the years 1856 and 1857 the total of forfeitures was $9,565 50, and of fines $1,652 50. Of these sums only $1,482 appears to have been collected. By surrendering this fund to the public schools there will be created an additional incentive to more rigid collections in future; and thus the double benefit of aiding the schools, and punishing offenders with more certainty, will be obtained.

In addition to this provision, your committee propose an annual appropriation from the national treasury of twenty thousand dollars, for five years, on the condition that the citizens submit to the tax above alluded to—that is, a tax of about $26,000 in the aggregate, for the special purposes of the public schools, and this to be in addition to the sums now paid by them. Thus the government will pay, for

limited time, about one part, and the citizens two parts of the expense of keeping up the public schools; and it is hoped, with this aid, these schools in five years will be put on such a solid foundation that they can be sustained without aid from the government.

In accordance with these views, your committee report a bill.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 113.

IN THE SENATE OF THE UNITED STATES.

MARCH 10, 1858.—Ordered to be printed.

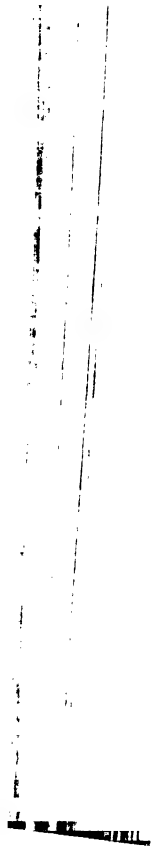
Mr. JOHNSON, of Arkansas, submitted the following

REPORT.

The Committee on Military Affairs and the Militia, to whom was referred the petition of Alexander Hays, having had the same under consideration, report:

The petitioner represents that while he was attached to the United States army in Mexico, in 1846, as a lieutenant, eighth infantry, he was obliged to act as disbursing officer, receiver of subsistence, &c. These duties were not incumbent upon him under his commission in the line, but arose from the exigencies of the service on several occasions; and in the settlement of his accounts at the treasury he finds himself charged with $2,050 57 on cash account, and $1,934 71 on account of subsistence stores. In the account making up this first item, Lieutenant Hays is charged with drafts made upon and paid by Captain R. E. Clary, in December, 1847—$1,500—which, in his correspondence with the War Department, he pronounces forgeries, and he also declares that $400, charged in the same account for "discount on draft," was a fraud practiced upon him by his clerk. These are the only explanations made by Lieutenant Hays for these deficiencies, (the residue of the $2,090 57 being errors in calculations, $23 35; $80 paid for clerk hire disallowed, and $48 received by him from Captain J. H. Young, which he did not acknowledge.) For the second item, $1,934 71, for sundry provisions turned over to him at Puebla, Mexico, in October, 1847, he does not account in any way, nor have any returns been received at the War Department showing their application to the public service; but some *unsigned* vouchers were left by him with his account in the Third Auditor's office, for which, of course, he cannot be credited without some satisfactory explanation. The committee do not find any reasonable offsets to these charges against Lieutenant Hays, and report as follows:

Resolved, That the prayer of the petitioner be denied.



35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 114.

IN THE SENATE OF THE UNITED STATES.

MARCH 12, 1858.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 41.]

The Committee on Private Land Claims, to whom was referred the bill "for the relief of Manuel Lisa, Joachim Lisa, and others, and to provide for the location of certain private land claims," have had the same under consideration, and ask leave to make the following report:

The bill under consideration provides for the location of certain confirmed private land claims, and for the confirmation of certain other claims recommended for confirmation by the board of commissioners appointed to adjust private land claims under the act of March 2, 1805, and the acts supplementary thereto.

By the first section of the act entitled "An act confirming claims to land in the State of Missouri, and for other purposes," approved July 4, 1836, all claims reported upon favorably by the commissioners, and embraced within the two several reports therein named, were confirmed, with the exception of certain claims therein specified.

The second section provides, "that if it shall be found that any tract or tracts, confirmed as aforesaid, or any part thereof, had been previously located by any other person or persons, under any law of the United States, or had been surveyed and sold by the United States, this act shall confer no title to such lands in opposition to the rights acquired by such location or purchase; but the individual or individuals, whose claims are hereby confirmed, shall be permitted to locate so much thereof as interferes with such location or purchase on any unappropriated lands of the United States within the State of Missouri, or Territory of Arkansas, in which the original claim may be, that may be subject to entry at private sale."

The 3d section provides the manner in which such location shall be made, and for the issuing of the patent.

Under this confirmatory act, the claim of the sons of Benito Vasquez was confirmed. Subsequent to such confirmation, the interest of Joseph Vasquez, one of the confirmees, became vested in one J. Epes Cowan, who took possession under it of a certain tract of land in

Missouri, then unsurveyed. After the survey, the said Cowan made application to the General Land Office for a patent, under the 2d and 3d sections of the said act of July 4, 1836. The Commissioner, entertaining doubts upon the question, referred the same to the Attorney General, and on the 5th of February, 1841, Attorney General Gilpin gave his opinion thereon, (see Opinions of Attorneys General, page 1377,) in which he says:

"I am of opinion that the first section of the act in question fully confirms and gives a valid title under the grant to the sons of Benito Vasquez, but I do not think that, without further legislation, the same can be located upon any of the public lands of the United States. This can never be done except by authority from the legislature and the law in question; though it confirms the grant, does not provide for its location. The first section is certainly nothing more than confirmatory of certain Spanish claims. It is in the second and third sections that the power to locate them is given, if anywhere. What is that power? It is to locate 'tracts' confirmed by the first section, and tracts 'lying within the State of Missouri or the Territory of Arkansas.'

"If such confirmed 'tracts' interfere with the lands already surveyed and sold by the United States, provision is made for their location elsewhere. It seems to me impossible to regard these provisions as applicable to any grants but such as have already had a *specific location;* they cannot be applied to *floating* and *unascertained* claims—mere rights of location, such as the grant to the sons of Benito Vasquez is, even though they are valid and confirmed. All the claims confirmed by the first section, except a very few, were located Spanish grants; for them the second and third sections of the act adequately provide; for the others no provision is made, *doubtless, from accident;* but the omission is one that can *only be rectified by the legislature.*"

By special act, approved January 12, 1855, the legal representatives of the said sons of Benito Vasquez, as also John Colligan, were authorized, respectively, to enter a quantity of land equal to that confirmed to them by the said act of July 4, 1836, and at the 1st session of the present Congress an act was passed authorizing the legal representatives of Manuel Gonzales Moro, whose claim was similar in all respects to the Vasquez claim, to enter a quantity of land equal to that confirmed by said act, and that yet remained unsatisfied.

To avoid these special acts, as well as to do justice to all confirmees of the United States, and to meet the objections of the Attorney General as above set forth, the committee believe that this general provision should be made. The only difference between the provision under consideration and the evident intention of the act of 1836 is to extend to the confirmees the right to make the location on any of the public lands of the United States, subject to sale at private entry at a price not exceeding one dollar and twenty-five cents per acre, whilst by the said act such confirmees were intended to be confined to the State or Territory in which the original claim was situated. This change the committee believe is due to the claimants, as it will, to some extent, place them in the position of securing such lands as

they might have selected in 1836, had ample provision been made by said act.

In reference to the confirmation provided by this bill, the committee find that a large number of claims reported for confirmation by the commissioners appointed under the act entitled "An act for ascertaining and adjusting the titles and claims to lands within the Territory of Orleans and the district of Louisiana," approved March 2, 1805, and the several acts supplementary thereto and embraced in the report of the Secretary of the Treasury dated the 8th day of January, 1812, and communicated to the House of Representatives on the 9th day of January, 1812 (see Am. State Papers, Public Lands, Duff Green's edition, volume 2, pages 224 to 367, inclusive,) have not been confirmed by Congress.

It has been generally understood that all the claims recommended for confirmation in the report aforesaid were confirmed by the act entitled "An act for the final adjustment of land titles in the State of Louisiana and Territory of Missouri," approved April 12, 1814; but upon a careful examination of said act, it is found that conditions were attached which excepted from this general confirmatory act many claims recommended by the commissioners for confirmation. The policy that governed Congress in passing a confirmatory act, with the conditions therein expressed, is not appreciated by your committee. By it they omitted to confirm many of the most meritorious claims, which, after a careful examination, were recommended by the commissioners for confirmation.

For instance: under the first proviso to the first section a greater quantity than one league square could not be confirmed to the claimant, although he may have been justly entitled to a greater quantity; and no confirmation could be made to any claimant in his own right if such claimant had received a donation grant from the United States in the said Territory. In the first section there are certain other conditions, which were unnecessary, to determine the legal rights of the claimants. For if, under the treaty stipulations, the claimant was entitled to a confirmation of his title, it was unjust, if not incompetent, for Congress to attach conditions which would defeat the confirmation. Under the said first section it was required that the claimant must have been a resident within the territory at certain specified times; therefore a bona fide claimant, resident of any of the States, was defeated in his claim.

The lands covered by the claims reported by the commissioners for confirmation were expressly reserved from sale by the act providing for the appointment of the commissioners, and such reservation has continued up to the present time.

Most, if not all, of the claimants whose titles would be confirmed by this bill have been in possession of the lands claimed from the date of the concession up to the present time, and many have made lasting and valuable improvements thereon. These last considerations alone would induce the committee to be liberal to the claimants within the true policy of the government; but when taken in connexion with the fact that these claims had undergone a careful and full investigation and were recommended for confirmation, the committee feel that duty devolves upon Congress to confirm the claimants in their titles.

At the first session of the 18th Congress the House Committee on Public Lands made a report upon certain resolutions in relation to lands in the State of Louisiana, (see Am. State Papers, vol. 3, p. 557,) in which they say: "The second resolution instructs your committee to inquire into the expediency of causing patents to issue for lands to persons within the State of Louisiana, *whose titles and claims to lands have been confirmed by the several boards of commissioners*, acting under the authority of the United States. By referring to the act of the 8th (12th) of April, 1814, it will be found that it is made the duty of the registers of the several land districts in Louisiana to furnish the principal deputy surveyor of that district with the list of confirmed private claims; and it is also made the duty of such principal deputy, under the direction of the surveyor, south of Tennessee, to survey those claims at the expense of the United States; which surveys are required to be returned to the Commissioner of the General Land Office, with the certificates of confirmation, whose duty it is made to make out the patents and forward them to the registers for the use of the claimants. From this statement it will appear that if any unaccountable or unreasonable delay has occurred in issuing the patents to lands in Louisiana, *it cannot be attributed to any want of legislation* on the part of Congress. Nor are the committee in the least disposed to fix censure upon any one; but in the absence of all other evidence, except the mere want of performance of the duties required by law, feel themselves bound to presume that the delay in issuing patents has proceeded from the unsettled state of private claims to land in Louisiana, or from causes not heretofore evitable. This they feel the more inclined to do, as they find a confirmation of private claims on an examination made but a short time previously to such confirmation at the last session of Congress."

From this report it would appear that the committee regarded the delay in issuing patents under the confirmatory act of 1814 to the complicated and unsettled state of private land claims in Louisiana, and not from want of any legislation on the part of Congress.

The committee find, by referring to the several confirmatory acts of Congress, that all claims recommended for confirmation by the several boards of commissioners were confirmed in a body as embraced in the report, unless the claim, either by the name of the claimant or by the number of the claim, was specially excepted from confirmation, with the exception of the confirmatory act of 1814. By excepting the claim in the name of the claimant or by the number, such claimant had notice that his claim was not confirmed; but by the act of 1814, years must elapse before the claimant could ascertain whether his title was confirmed or not.

The claimant would naturally conclude, after he had learned that the board of commissioners had recommended his claim for confirmation, and that a confirmatory act had been passed by Congress, and his claim not specially excepted by name or number, that his claim, with the rest, stood confirmed.

In some instances the committee find that years have elapsed after the report of the commissioners, and after the same had been laid be-

fore Congress, without any action of Congress thereon. The report of the commissioners upon private land claims in the western district of Louisiana, dated the 30th of December, 1815, and laid before Congress in 1816, was not passed upon by Congress until the confirmatory act, approved February 5, 1825. Thus, after nine years had passed away, Congress took up the report and confirmed all the claims in a body therein recommended for confirmation.

The bill now reported by the committee is therefore the same as that referred to them, with the following amendments, viz:

1. It excludes the following claims which have already been settled by previous acts of Congress, viz: No. 228, already confirmed by the original act; No. 126, settled by the act of 8th August, 1846, and No. 4, by the act of 3d March, 1847.

2. It provides for the confirmation of the Louisiana land claims above described.

The committee, under the circumstances, have no hesitation in recommending that these claims, confirmed by the said commissioners, ought to be confirmed, to the extent provided in the bill, by Congress.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 115.

IN THE SENATE OF THE UNITED STATES.

MARCH 12, 1858.—Ordered to be printed.

Mr. DURKEE made the following

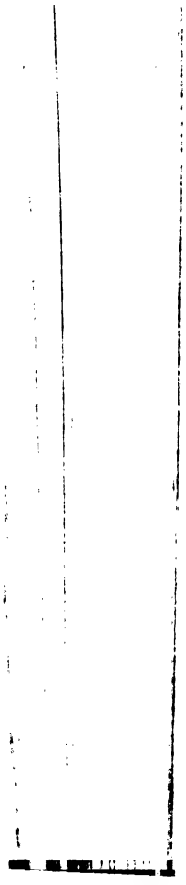
REPORT

[To accompany Bill S. 196.]

The Committee on Private Land Claims, to whom was referred the memorial of the "Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States," and also the petition of Edson Sherwood and twenty-four others, praying for the confirmation to the above named society of its title to a certain tract of land in the State of Wisconsin, have had the same under consideration, and ask leave to make the following report:

That in the year 1829, as petitioners state, the "Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States," by permission of the Secretary of War, entered upon lot No. 18, situated on the east side of Fox river, near Green Bay, in the State of Wisconsin, and established thereon a mission and school among the Menomonee and other Indians in that vicinity. The memorial of the society alleges that the mission continued in successful operation until the removal of the Indians to the west of the Mississippi, and that upwards of nine thousand dollars have been disbursed for improvements made by it on said land. The society, in order to indemnify itself as far as possible, as well as to carry on missions elsewhere, now asks Congress to pass an act allowing it to enter said land on the payment of the usual price demanded of settlers on public lands.

Your committee can see no objections to the prayer of the petitioners being granted, and a bill is accordingly reported, and its passage recommended, authorizing said society to enter, at the rate of one dollar and twenty-five cents per acre, the tract settled by it, and known as the Mission Farm, and containing 92.81 superficial acres.



35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No 116.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 198.]

The Committee on Claims, to whom was referred the petition of Joseph Hardy and Alton Long, have considered the same, and report:

That the facts and principles embraced in and governing the case are well stated in a printed report made by the Committee of Claims of the House of Representatives of the last Congress, who presented a bill for the relief of the petitioners. Your committee consider it sufficient to adopt that report, without going into a further explanation of the case. They therefore report the bill which was drawn up and presented to the House of Representatives as aforesaid, and recommend its passage.

IN THE HOUSE OF REPRESENTATIVES, *August* 2, 1856.

The Committee of Claims, to whom was referred the petition of Hardy and Long, for the return of rent collected by the agents of the United States for the working of mines not the property of the United States, have had the same under consideration, and now report:

Joseph Hardy, one of the petitioners, previous to the year 1823, made an arrangement with the Winnebago, Ottowa, Pottowatomie, and Chippewa Indians, and obtained from them permission to work certain lead mines on the lands occupied by them, on the Upper Mississippi, within the territories of the United States, and to which their title had not then been extinguished. There is no direct proof of that arrangement, or of the time when it was entered into, but the fact of its having been made is sufficiently established by other evidence.

Some time after this arrangement was made, it seems that the agents of the United States saw fit to contest the right of Mr. Hardy to carry on the smelting of lead under this contract with the Indians, and insisted upon his paying rent to the United States for the use of the mines, and taking from them a lease of license to that effect. When this interference with the operations of Mr. Hardy first took place

does not appear from anything in the papers submitted, but it was certainly prior to the year 1826, as rent was paid to the United States by Mr. Hardy in 1826; and there is a copy of a contract between him and Lieutenant M. Thomas, superintendent of the United States lead mines, dated June 7, 1827, giving to Mr. Hardy permission to purchase and smelt ore on those lands for the period of one year from that date, on his stipulating to pay a certain rent therefor.

The Indian title to the lands on which the mines in question were situated was not extinguished until in 1829 and 1832, when the treaties of Prairie du Chien and of Rock Island were, respectively, made (7 Statutes at Large, 320 and 370) with the different tribes occupying them. From the time the agents of the United States first claimed rent for the working of these mines, it appears from a statement furnished by the Commissioner of the General Land Office, with his letter of the 21st of February, 1850, that Mr. Hardy had delivered to the agents of the United States, up to the 2d of January, 1830—the day on which the treaty of Prairie du Chien went into effect—107,492 pounds of lead. And the question now presented is this: Ought this rent to be returned, because improperly exacted?

The Commissioner of the General Land Office, in his letter of the 21st February, 1850, says that Mr. Hardy acted in violation of law when he made the arrangement spoken of with the Indians, and that he acquired no rights from them in consequence of this, and refers to a provision in the 12th section of the act approved May 19, 1796, which declares "that no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian, or nation, or tribe of Indians, within the bounds of the United States, shall be of any validity in law or equity, unless the same be made by treaty," &c. Your committee are of opinion that this provision does not sustain the position taken by the Commissioner. The object of the provision was to prevent any contracts being entered into with the Indians which would have vested a real right of any kind whatever in third persons which could in any way impair the proprietary rights of the United States to these lands, or interfere with or affect their disposition of them whenever the Indian title was extinguished. The Indian title was to the occupancy of the land, and that right of occupancy entitled them to derive any advantage from it which was not inconsistent with the tenure by which they held it. The working of the mines whilst they occupied the land was not inconsistent with that tenure, as the right to work them would have terminated with their abandonment of the land. And what they could have properly done themselves, which was in itself of a temporary character, and purely precarious in its nature, as being entirely dependent on the continuation of their occupancy, they were clearly competent to permit others to do, whilst their right of occupancy had been divested neither by abandonment nor treaty. And this right, your committee think, was not in the slightest degree restrained, or intended to be restrained, by the provision of the act in question.

If this view be correct, it is clear the rent paid by Mr. Hardy was exacted without any right; that it was improperly received by the United States, and that it ought to be returned to the petitioners.

And as the correctness of this view has been already recognized by Congress in other cases, and especially in that of John P. B. and the legal representatives of Henry Gratiot, by act approved August 14, 1848, your committee do not hesitate to recommend the passage of the bill herewith reported, providing for the liquidation and payment to the petitioners of the value of the lead so received by the United States.

To the Senate and House of Representatives of the United States of America in Congress assembled:

The undersigned, your petitioners, respectfully represent to your honorable bodies, that one of them, to wit: Joseph Hardy, (late of the Galena lead mines, now of Missouri,) commenced the mining and smelting business at said mines; that the said business was commenced and conducted by said Joseph Hardy upon lands then owned and occupied by the Winnebago, Ottowa, Pottowatomie, and Chippewa tribes of Indians; that prior to said Hardy's entering upon said business he made an arrangement by which he purchased from the said Indians their permission to prosecute said business; that he carried on said business, not only by virtue of said agreement and purchase from the owners of the lands, but also with the knowledge and acquiescence of the United States agents in that quarter, no one of whom ever disputed, or offered, or attempted, to disturb his possessory rights; that after the commencing of his business, at great expense, and several years before the United States purchased the lands and mines which were thus in his possession by purchase, certain agents of the United States lead mines claimed that they belonged to the United States, and demanded from said Hardy, for the United States, ten per cent. of all the lead manufactured by him from the ore dug upon the lands, then in his undisputed possession, by virtue of his said agreement with the said Indian owners thereof; that the said Joseph Hardy complied with the demands and requisitions of the regularly appointed superintendent and agents of the United States lead mines, notwithstanding he questioned the legal or equitable right and authority of said agents to exact rent from the tribes of said Indians; that said Hardy (during the existence of his agreement with said Indians) was never disturbed in his occupation of the lands, but, on the contrary, his occupancy, from first to last, though known to, was acquiesced in by the lawful agents of the United States; that subsequent to the year 1823, and prior to the treaty of 1830, by which the United States first acquired the lands occupied by said Hardy, said Hardy paid a large amount of rent to agents of the United States, who paid the same into the treasury, as is shown by the accounts and receipts of the government, which accounts are to be found in the proper departments at Washington city, and receipt herewith submitted; that the investment of large sums of money by said Joseph Hardy in the business of mining and smelting, by virtue of an agreement with the Indian owners of the lands used, being known to and

acquiesced in by the United States for several consecutive years, equitably entitled his property to protection; that the exacting of rents by the United States from the Indians, their employés, or their tenants, *for the use of their own lands*, was a procedure unknown to law, and at war with the rights of the Indians.

Your petitioners would further state, that during the Indian disturbances the said Joseph Hardy built a fort and furnished teams and wagons for the use of the United States; that he sustained great loss thereby; and, inasmuch as your petitioners are advised that the rents which were paid by the said Joseph Hardy previous to the ratifying of the treaty aforesaid were illegally exacted from him by said agents, your petitioners therefore pray that the moneys exacted from the said Joseph Hardy as rents for ore dug from the lands not owned by the United States may be returned to them, as has been done in several similar cases.

Most respectfully, &c.,

JOSEPH HARDY.
ALTON LONG.

DECEMBER 4, 1854.

GENERAL LAND OFFICE, *February* 21, 1850.

SIR: Your letter of the 14th instant, addressed to the Secretary of War, desiring certain papers and information, having reference to the mining and smelting operations of Joseph Hardy, late of the Galena lead mines, and now a claimant before Congress, has been referred for the consideration of this office and for reply, the mineral business of the United States being under its management.

After a careful examination of all the documents, books, and papers on file in this office, having any connexion or relation to mineral affairs, there is no contract, lease, license, or permit to be found among them in the name of said claimant; but I have the honor to furnish you with an exhibit of the amount of rent lead paid by Joseph Hardy to agents of the United States, prepared from their abstracts and returns made to the ordnance bureau, then having charge of the United States lead mines and all matters pertaining thereto, being full amount exacted as rent from the year 1826 up to the ratification of the treaty of Prairie du Chien, with the Indians, for the purchase of that section of country, the mines being within the boundary of that cession. I have included, also, in the sum total of rents paid, the amount taken from entries in the account books of said agents or superintendents which should properly be added—that is, taking it for granted they are equally conclusive testimony with the returns, &c., in favor of Mr. Hardy.

The fact of such an amount of rent lead having been paid, and returns of the same made by the officers of the government to the proper department, the implication I think is clear that a lease, permit, or other agreement between the United States and Mr. Hardy once existed.

The total amount of rent lead paid by Joseph Hardy, and within the period above stated, is 107,492 pounds.

It will be perceived by the acknowledgment of Mr. Hardy that, in contracting with the Indians for permission to dig for lead ore and smelt the same upon their lands, he acted in violation of law inhibiting all intercourse and trade with them, without permission from the general government; if not so expressedly enacted, certainly contrary to the spirit of the laws upon the subject. Section twelve of the act approved May 19, 1796, it would seem, reaches the case in question, an extract of which is as follows, to wit:

"*And be it further enacted*, That no purchase, *grant*, *lease*, or other conveyance of lands, or of any title or claim thereto, from any Indian, or nation or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty or convention, entered into pursuant to the constitution," &c., with a penalty for treating without authority.

On the other hand, a precedent in favor of Mr. Hardy should, I beg leave to suggest, be considered, being an act approved the 14th of August, 1848, for the relief of John P. B. and the legal representatives of Henry Gratiot, their claim being precisely of a similar character to that presented by Mr. Hardy.

I herewith return, enclosed, the petition which accompanied your letter.

With much respect, your most obedient servant,

J. BUTTERFIELD, *Commissioner*.

Hon. J. R. J. DANIEL,
Chairman of Committee of Claims, House of Representatives.

Exhibit of rent lead paid by Joseph Hardy to agents of the United States prior to the ratification of the treaty of Prairie du Chien, of January 2, 1830.

Amount from entries in account books of agents or superintendents, corroborated by returns and abstracts:

Consolidated return for quarter ending December 31, 1826, is	11,221	lbs.
Consolidated returns for March 31, 1827	2,788	"
Consolidated returns for month of May	6,176	"
	20,185	"
From abstracts and returns alone	87,307	"
Making a total of	107,492	"

GENERAL LAND OFFICE, *February* 21, 1850.

This indenture, made and entered into this 7th day of June, 1827, between Lieut. M. Thomas, superintending the United States lead mines, of the first part, and Joseph Hardy, jr., of the second part, witnesseth:

That the said party of the second part is hereby permitted to purchase and smelt lead ore at the United States mines, on the Upper Mississippi, for the period of one year from the date hereof, upon the following conditions, to wit:

First. All purchasers, or other requisitions, of ore, ashes, zane, or lead, to be from persons authorized to work the mines, either as lessees, smelters, or diggers, and from no others; and no ore to be purchased from the leased premises of any person without his permission.

Second. To commence smelting as soon as one hundred thousand pounds of ore are obtained, and to continue it so long as any is on hand; to weigh a charge of ore for the log furnace, and the lead produced from it, when required to do it by the said first party, or his assistant.

Third. To keep a book containing an accurate account of all ore, ashes, or zane purchased, or otherwise acquired, which book shall, at all times, be open to the inspection of the said first party, or his assistant, and to furnish a transcript or return at the end of every month, (agreeably to a form to be furnished by said first party,) which book and returns to be verified on oath if required.

Fourth. The said second party hereby agree to pay to the said first party, for the use of the United States, the one-tenth part of all the lead smelted by him under this indenture, to be paid monthly in clean pure lead, at the warehouse on Fever river, or at such other place near the mines as the said first party shall direct, and free of expense to the United States. And the said second party is not to sell, or remove from the place of smelting, in any manner whatever, any lead, until the rent has been paid as aforesaid.

Fifth. The said second party is to have as much fuel as will suffice for the purpose of his indenture, and to cultivate as much land as will suffice to furnish his teams, &c., with provender.

Sixth. It is understood and agreed between the aforesaid parties, that the second party shall not employ, in any manner, any smelter, lessee, or miner, who has forfeited his license, lease, or permit to mine, nor any other person who is at the mines without the authority of the said first party; and as good faith and fair dealing should prevail, the said second party agrees not to entice or harbor the laborers or workmen of another smelter.

Sixty days are allowed, after the expiration of this license, to *close* all business under it; but it is understood that no purchase or hauling of ore is to take place after the license has expired. The bond given for the faithful performance of the contract is to be in full force and virtue until a written settlement is made.

It is distinctly understood by the said parties, that upon proof being afforded to the first party that either of the foregoing stipulations

have been violated, or not complied with, he may declare this indenture null and void, and re-enter and take possession of all the premises, as if no such agreement existed.

M. THOMAS, [L. S.]
Lieut. U. S. Army, Supt. U. S. Lead Mines.
JOSEPH HARDY, Jr. [L. S.]

Witness present: TH. MCKNIGHT.

Approved November 12, 1827.

J. Q. ADAMS.

Registered and original returned to Lieut. Thomas, December 8, 1827.

Know all men by these presents, that we, Joseph Hardy, jr., as principal, and John H. Gay and Thomas Estes as sureties, are holden, and stand firmly bound, unto the United States of America, or their certain attorney, in the penal sum of ten thousand dollars, current money of the said United States, well and truly to be paid into their treasury; for which payment, well and truly to be made, we, the said Joseph Hardy, jr., John H. Gay, and Thomas Estes, do hereby jointly and severally bind ourselves, our heirs, executors, and administrators, and each and every of them, jointly, severally, and firmly, by these presents. Signed with our hands, and sealed with our seals, this seventh day of June, in the year of our Lord one thousand eight hundred and twenty-seven.

The condition of the above obligation is such, that whereas the said Joseph Hardy, jr., has obtained from the agent of the United States a license, bearing date the 7th day of June, 1827, containing stipulations therein more particularly described, to smelt lead ore: Now, if the said Joseph Hardy, jr., shall faithfully and fully execute and comply with the terms and conditions set forth in said license, then, and in that case, this obligation to be void and of no effect; otherwise to remain in full force and virtue.

JOSEPH HARDY, JR. [L. S.]
JOHN H. GAY. [L. S.]
TH. ESTES. [L. S.]

Witnesses present:
TH. MCKNIGHT, as to Joseph Hardy.
GEO. COLLINS, as to Messrs. Gay and Estes.

Registered and original filed in the office of the Second Comptroller, December 8, 1827.

ORDNANCE OFFICE,
Washington, January 2, 1855.

The foregoing are true copies from one of the record books of this office; the renting of the United States lead mines, and granting smelting licenses at the times therein mentioned, being performed by officers of this department.

H. K. CRAIG,
Colonel Ordnance.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 117.

IN THE SENATE OF THE UNITED STATES.

MARCH 15, 1858.—Ordered to be printed.

Mr. JOHNSON made the following

REPORT.

[To accompany bill S. 202.]

The Committee on Military Affairs and the Militia, to whom was referred the memorial of Major Jeremiah Y. Dashiell, a paymaster in the United States army, praying relief, have considered the same, and now present the following report:

The committee find, from the official documents and affidavits accompanying the petition of Major Dashiell, that the troops stationed on and near Indian river, in Florida, were in arrears of pay from two to six months in April, 1857; that Major Dashiell, in due performance of his duty as paymaster of the district, drew from the assistant treasurer at Charleston, South Carolina, the sum of *twenty-three thousand one hundred and fifteen dollars*, which was placed in a leathern bag ordinarily used by him for this purpose, and put in charge of an escort; that there were two routes by which to reach his place of destination, (Fort Capron, Florida,) one by sea, and the other (the river route) partly by land and partly by water; and that the latter route, owing to the shallowness of the water, as well as to certain outrages and massacres which had been lately perpetrated by the Indians in that vicinity, was considered not only unsafe, but impracticable. Major Dashiell, therefore, took the only alternative, and proceeded by sea, in the schooner William and John, to the mouth of Indian river; arrived there, and acting under the advice of the captain of the vessel, who had six years' experience of the bar at the mouth of the river, he, with his son, proceeded to land. The bag containing the funds, which *was duly identified by size, weight, and appearance*, was lowered into the boat, being taken for that purpose from the iron safe in which it had been deposited. The bar, as appears from the officers of several vessels who were present, was in a favorable state for landing, and that it was so considered by Major Dashiell appears from the fact that himself and son unhesitatingly accompanied the treasure in its transit to the shore.

It further appears that, while crossing the bar, the yawl boat which contained the party was suddenly capsized by a cross-breaker, and the

bag containing the funds sunk. Major Dashiel, his son, and the crew, after clinging to the bottom of the boat for more than an hour, in imminent peril, were rescued by the boat of one of the vessels near by. Immediately after his rescue he applied for a guard to watch the spot, which was furnished by the commanding officer of the post, and took prompt and active measures to recover the money. A large reward was offered, and the most strenuous and constant endeavors made by the major and others to recover the treasure; but, owing to the high winds and heavy seas which then prevailed for several days, these attempts met with no success; and he was finally compelled, with reluctance, to abandon the search. The guard, however, remained, and the attempts to recover the funds were continued by the commanding officer of the post, but without a favorable result.

Your committee are of opinion, therefore, that the funds in charge of Major Dashiell, the property of the United States, were lost by an unforeseen and unavoidable accident, and that the said loss was in no manner due to negligence, or want of proper precautions on the part of said Dashiell; and they beg leave, therefore, to report a bill for his relief.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 118.

IN THE SENATE OF THE UNITED STATES.

MARCH 15, 1858.—Ordered to be printed.

Mr. DOOLITTLE made the following

REPORT.

[To accompany Joint Resolution S. 21.]

The Committee on Indian Affairs, to whom was referred the memorial of David Gordon, in behalf of himself and others, beg leave to report:

That in the year 1848 Congress passed the following act:

AN ACT for the relief of the legal representatives of George Fisher, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Second Auditor of the Treasury of the United States be, and he is hereby, authorized and required to examine and adjust the claims of the legal representatives of George Fisher, deceased, on principles of equity and justice, and having due regard to the proofs for the value of property taken or destroyed by the troops of the United States engaged in suppressing Indian hostilities in the year 1813; and that the said legal representatives be paid for the same out of any money in the treasury not otherwise appropriated.

SEC. 2. *And be it further enacted*, That, if it shall be found impracticable for the claimants to furnish distinct proof as to the specific quantity of property respectively taken or destroyed by the troops and by the Indians, it shall be lawful for the said accounting officer to apportion the losses caused by said troops and Indians, respectively, in such manner as, from the proofs, he may think just and equitable, *so as to afford a fair and full indemnity for all losses and injuries occasioned by said troops, and allow the claimants accordingly: Provided*, That nothing herein contained shall authorize any payment for property destroyed by Indians.

Approved April 12, 1848.

Under the provisions of this law there were two adjustments of the claim, which will appear by reference to copies of the Second Auditor's reports hereto attached as part of this report. After this settlement, Congress passed the following act:

AN ACT supplemental to an act therein mentioned.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the Second Auditor of the Treasury, under the provisions of the act of Congress for the relief of the legal representatives of George Fisher, deceased, approved 12th of April, 1848, to re-examine the said case, and to allow the claimants the benefit of the testimony heretofore marked "*rejected for the want of authentication:*" *Provided*, The same is now legally authenticated by the executive of Alabama; the adjustment to be made in strict accordance with the act herein above referred to, and to which this act is barely supplemental.

Approved December 22, 1854.

This law has never been executed. The late Secretary of the Treasury, Mr. Guthrie, refused to permit the Second Auditor to readjust the claim. His reasons therefor are hereto attached as a part of this report. The main reason which controlled his action was, that he assumed that the claimants had already had the benefit of the testimony marked "*rejected for want of authentication*," (abstracts of which are hereto annexed,) and he assumed that Congress in passing that law were ignorant of that fact. But the assumption of the Secretary was without foundation, and proceeded upon an entire mistake of the facts on his part, as appears conclusively by the affidavit of George M. Bibb, the certificate of the governor of the State of Alabama, and the other papers annexed to this report. The present Secretary of the Treasury declines to open the case for a new consideration, upon the ground that he is bound by the action of his predecessor. The character of the injuries complained of are such as to make the case one peculiarly proper for the consideration and adjustment of the War Department. The committee, therefore, recommend the passage of the accompanying joint resolution.

TREASURY DEPARTMENT,
Second Auditor's Office, March 30, 1855.

SIR: By an act approved December 22, 1854, entitled "An act supplemental to the act for the relief of the legal representatives of George Fisher, deceased," which original act was approved April 12, 1848, it is made the duty of the Second Auditor to examine the said case, and to allow the claimants the benefit of the testimony heretofore marked "*rejected for the want of authentication*, provided the same is now legally authenticated by the executive of Alabama," the adjustment to be made in strict accordance with the act above referred to, and to which this act is barely supplemental.

The facts in the case are these: My predecessor had submitted to him in this claim originally the deposition of six individuals, viz: Haden, Reviere, Presnal, Davis, Harrison, and Turner, testifying to

the amount and value of property in the possession of George Fisher on a farm in Mississippi Territory, which, they alleged, was destroyed in the year 1813. Their evidence estimates the value of the property at sums varying between $13,000 and $22,000. In April, 1848, an award was made, on the deposition of Haden, Reviere, and Presnal, allowing $8,873, without interest, the claimants protesting at the time against the amount, and insisting upon their right to interest; the depositions of Davis, Harrison, and Turner were rejected for want of authentication. In December, 1848, the Auditor again took up the case, and upon these rejected depositions allowed the further sum of $8,973, with interest on the same from 13th of February, 1832, till December, 1848; in rendering the award, however, he deducted from said second allowance the sum of $8,873, with interest thereon from 22d April, 1848, to December, 1848, amounting to $9,237 79, which really absorbed the interest upon, and a part of the principal of, $8,973, the second award; the claimants still protesting against the allowance, and contending for interest from 1813, the date of the destruction of the property, and not from February, 1832, the time alleged by the Auditor as the earliest period of the presentation of the claim.

The question as to the time when interest should commence was submitted to the Attorney General, and, in an opinion given by him, dated February 16, 1849, he held that, as the Second Auditor had decided that the value of the property taken or destroyed, with interest upon it, should be paid as a fair and full indemnity, that the interest should be computed from the time when the property was taken and destroyed. At this point the case rested when I came into office, the 9th of April, 1849, and I submitted to the Secretary the two questions: 1st. Whether the opinion of the late Attorney General upon the decision of the late Second Auditor was obligatory on my action? and, second, ought interest to have been allowed under the act of Congress referred to? I was answered by an opinion from the Attorney General, dated May 8, 1849, that I had no discretion in the matter, and interest was allowed on $8,973 from the 13th of July, 1813, to the 13th of February, 1832, amounting to $10,004 89, presuming that the interest had been allowed as intended by the awards of my predecessor from 1832 to 1848.

In looking into the case now, under the provisions of the act approved December 22, 1854, I find that Congress acted under the impression that the testimony marked "rejected for want of authentication" had never been acted on, whilst the second award of my predecessor shows that he admitted the testimony and allowed the sum of $8,973. I also discover the mistake of my predecessor in calculating the interest.

The point on which I desire your advice and decision is, whether I am restricted by the last act to the question of the rejected testimony, and whether I have the power to correct the error in the calculation of interest.

The whole subject, with all the papers connected with the case, is submitted for your decision.

I enclose a statement showing what amount has been paid under

the several decisions heretofore made, and what amount is due if the awards of my predecessor are carried out, allowing interest upon the same from the 13th of July, 1813, to the 22d of April, 1848, the date of the first award. I also send with the papers, by request, the argument of counsel in the case.

Very respectfully, your obedient servant,

P. CLAYTON,
Second Auditor.

Hon. JAMES GUTHRIE,
Secretary of the Treasury.

Statement of the claim of the representatives of George Fisher, deceased, as due under the several awards heretofore made, and the amounts paid under said awards:

Amount awarded in April, 1848		$8,873 00
Amount awarded in December, 1848		8,973 00
		17,846 00
Interest on $17,846, the amount of the above awards, from 13th July, 1813, the date of the destruction of the property, to 22d April, 1848, the date of the first award, 34 years, 9 months, and 10 days, at 6 per cent. per annum		37,238 66
		55,084 66
From which deduct—		
Amount paid 22d April, 1848	$8,873 00	
Amount paid 30th December, 1848	8,797 94	
Amount paid 12th May, 1849	10,004 89	
		27,675 83
		27 408 83

Basis of the first award.

100 acres of corn on Bassett's creek, 30 bushels to the acre, (one-half)	$1,500
400 cattle, $10 each, (one-half)	2,000
350 stock hogs, $3 each, (one-half)	525
75 fat hogs, $14 each, (one-half)	525
Hats and goods used by troops, (one-half)	500
4 dozen wine	48
125 gallons of whiskey	125
Wheat in stacks	250
Corn in Alabama	3,500
	8,873

Error of $100 in addition.

Basis of the second award.

Corn on Bassett's creek, 3,000 bushels, at $1 each, (one-half)	$1,500
Cattle, 500 head, (200 used,) at $10 each	2,000
Hogs, stock, 350, at $3 each, (one-half)	525
Hogs, fat, 75, at $14 each, (one-half)	525
Furs, hats, and goods in store, whiskey and wine	673
Wheat in stacks, (35 acres)	250
Whole crop on Alabama river farm, Fort Claiborne	3,500
	8,973

TREASURY DEPARTMENT,
Second Auditor's Office, February 14, 1857.

SIR: In answer to the resolution adopted by the Committee on Indian Affairs of the Senate, and referred to this office yesterday, asking what action has been taken by the department in execution of the two acts of Congress "for the relief of the legal representatives of George Fisher, deceased, approved April 12, 1848, and December 22, 1854," and requesting the decisions of the Attorney General in relation to interest on said claim, I have the honor to report:

That on a settlement of the account on April 22, 1848, there was allowed and paid, without interest	$8,873 00
That on settlement of December 30, 1848, there was awarded $8,973, with interest thereon from February 13, 1832, to date of this settlement, at 6 per cent. per annum, amounting to $18,035 73, from which was deducted $8,873 paid on previous settlement, and interest thereon, at the same rate, to the date of this settlement, amounting to $9,237 79, which leaves a balance, which was paid December 30, 1848	8,797 94
And that on the last settlement, on the 12th of May, 1849, there was allowed and paid as interest on $8,973, awarded to the representatives of George Fisher, from July 13, 1813, to February 13, 1832, at 6 per cent. per annum, under opinion of Attorney General of May 8, 1849	10,004 89
	27,675 83

The opinions of the Attorney General, of December 20, 1849, February 16, 1849, and May 8, 1849, are herewith transmitted, as requested.

The foregoing exhibits all the action of this office by settlement under the act "for the relief of the representatives of George Fisher," approved April 12, 1848. Under the act approved December 22, 1854, no action has taken place, further than is contained in my letters of

March 30, 1855, and June 11, 1855, addressed to the Secretary of the Treasury. The final action on the case, I presume, is on file in the office of the Secretary, as it was not transmitted with the papers of George Fisher's representatives when returned to this office. The resolution and letter of Mr. Sebastian are returned herewith.

Very respectfully, your obedient servant,

P. CLAYTON,
Second Auditor.

Hon. JAMES GUTHRIE,
Secretary of the Treasury.

TREASURY DEPARTMENT,
April 4, 1855.

SIR: I find that the Second Auditor, under date of the 22d of April, 1848, rejecting certain depositions for want of sufficient authentication, awarded to the representatives of George Fisher the sum of $8,873, as a full and fair equivalent for the property destroyed by the United States troops, and that said sum was accordingly paid to the representatives. I also find that the said Auditor again took up the said case, under an opinion of the Attorney General as to the rejected depositions, and made another award, in which he allowed, on the whole case, for the property destroyed by the United States troops, the sum of $8,973, being $100 more than allowed by the first award, and on this latter award allowed interest, at the rate of six per cent., from the 13th of February, 1832, the time when Congress was first petitioned to settle the claim, and deducted therefrom the first award of $8,873, leaving a balance of $8,797 94, which was paid the representatives.

I further find that, upon the opinion of Attorney General Toucey, you took up the case and allowed interest upon the last award of $8,973 from the 13th of July, 1813, to the 13th of February, 1832, and allowed the further sum of $10,004 89.

You will thus see that the sum awarded to Fisher's representatives, by your predecessor, under his second award, embracing the rejected depositions, has been fully paid, with interest from the 13th of February, 1813, and that there was not the two sums of $8,873 and $8,973, constituting $17,846, awarded for the damages done by the United States troops, and, consequently, there is no such balance due for interest or otherwise, as you suppose.

In my opinion, the second award of your predecessor, allowing interest from 1832 to the time application was first made to Congress for compensation, was all that equity and justice called for, and that Attorney General Toucey's opinion ought not to have been applied to the case as it stood, and did not justify the further allowance of interest.

As the second award of your predecessor was made on the basis of the rejected depositions on making his first award, the act of 1854, authorizing those depositions to be considered, and a further award made, was for the want of the proper information; and as they have

already been considered and acted upon, you are not authorized to revise the action of your predecessor under the provision of the act of 1854, but should make a detailed report of the case to me, so that I may lay it before the President, to be presented to Congress for their consideration.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

P. CLAYTON, Esq.,
Second Auditor of the Treasury.

The papers are herewith returned.

TREASURY DEPARTMENT,
December 20, 1856.

SIR: I have the honor to report to you, in order that the fact may, if you think proper, be communicated to Congress, that the act entitled "An act supplementary to an act therein mentioned," approved 22d December, 1854, has not been executed for the reasons and under the circumstances which will be stated.

The act provides "that it shall be the duty of the Second Auditor of the Treasury, under the provisions of the act of Congress for the relief of the legal representatives of George Fisher, deceased, approved April 12, 1848, to re-examine the said case, and to allow the claimants the benefit of the testimony heretofore marked *rejected for the want of authentication*, provided the same is now legally authenticated by the executive of Alabama; the adjustment to be made in strict accordance with the act hereinbefore referred to, and to which this act is barely supplemental."

The facts of the case are, that under the said act of 12th April, 1848, the Second Auditor made an award, upon the testimony of Robert G. Hayden, H. L. Deviene, and Absalom P. Greswall, on which there was allowed and paid $8,873. The Auditor, in December, 1848, made a subsequent award, in which, taking into view the testimony considered in the former, as well as the affidavits of Davis, Turner, and Hanson, then rejected "because there was no proof that the several persons before whom they were taken were justices of the peace," allowed, by force of the whole, the sum of (being $100 more than the sums previously allowed) $8,973 00

The Auditor allowed interest on this sum from the 12th of February, 1832, when Colonel Fisher first presented his petition to Congress 9,062 73

Making 18,035 73

And deducted the amount of the former award, $8,873, with interest thereon from date of payment 9,237 79

Being 8,797 84

which was paid on the 30th December, 1848.

Under opinions of successive Attorneys General, of 16th February and 8th May, 1849, the Auditor further allowed interest from the 13th July, 1813, when the injury is alleged to have been done, to the said 13th February, 1832, amounting to $10,004 87—making, in all, $27,675 83 awarded and paid in this case, of which $8,973 is for damages, and $18,702 85 for interest.

The act of 22d December, 1854, supplementary to an act therein mentioned, was introduced and passed in the Senate without papers.

The case was brought to my notice under a misapprehension on the part of the Auditor of the amount of principal paid under the act of 1848, and a submission of the question of a further allowance of interest. My decision on that point is annexed; the law being now settled at the treasury in respect to such cases, that where interest is not granted in express terms, or by necessary implication, it is not allowed.

By the passage of the recited act Congress intended to give Fisher's representatives the benefit of the rejected testimony; but as they had already had the benefit of that testimony in the second award made by the Auditor, and which fact was not known to Congress when they passed the supplementary act, the particular relief provided for cannot be granted. It seems manifest that Congress did not intend any relief other than the benefit of the rejected testimony, although an examination of the case is directed; but if there was authority now to re-examine the whole case, and the accounting officers of the treasury should arrive at the conclusion that Fisher's representatives were entitled to compensation for the whole damage claimed, as well that done by the United States troops, for which the allowance was made, as that done by the Indians, which was excluded, inasmuch as Fisher's representatives have received more interest than the whole amount of damage proved, and as no interest on such claims is now allowable, no further payment could be made on this claim. Neither of the acts for the benefit of Fisher's representatives gives interest, or directs the accounting officers to allow it; and there is no general law authorizing the payment of interest in this class of cases, whilst the practice of the government is against it. A petition to Congress in this class of cases is an appeal to the equity and justice of all the people of the United States; and the act of Congress stands like a judgment or decree in equity between individuals, and carries no interest unless given in the judgment or decree.

Upon this state of the case, the act of December, 1854, being imperative, the thing directed having been before done, if you shall think it fit to submit this report to Congress, it will be for that body to repeal the said act, or take such other order in the premises as it may deem proper.

Most respectfully, your obedient servant,

JAMES GUTHRIE,
Secretary of the Treasury.

Endorsed as follows:

I approve the views expressed within, and am not inclined to recommend further legislation in the case.

FRANKLIN PIERCE.

JANUARY 18, 1856.

TREASURY DEPARTMENT,
December 20, 1855.

SIR: I have the honor to report to you, in order that the fact may, if you think proper, be communicated to Congres, that the act entitled "An act supplemental to an act therein mentioned," approved December 22, 1854, has not been executed, for the reasons and under the circumstances which will be stated.

The act provides "that it shall be the duty of the Second Auditor of the Treasury, under the provisions of the act of Congress for the relief of the legal representatives of George Fischer, deceased, approved April 12, 1848, to re-examine the said case, and to allow the claimants the benefit of the testimony heretofore marked *rejected for the want of authentication*, provided the same is now legally authenticated by the executive of Alabama; the adjustment to be made in strict accordance with the act hereinbefore referred to, and to which this act is barely supplemental."

The facts of the case are, that, under the said act of April 12, 1848, the Second Auditor made an award upon the testimony of Robert G. Hayden, H. L. Deviene, and Absalom Preswal, on which there was allowed and paid $8,873. The Auditor, in December, 1848, made a subsequent award, in which, taking into view the testimony considered on the former, as well as the affidavits of Davis, Turner, and Hanson, then rejected "because there was no proof that the several persons before whom they were taken were justices of the peace," allowed, by force of the whole, the sum of $8,973, being $100 more than the sum previously allowed. The Auditor allowed interest on this sum from the 12th of February, 1832, when Colonel Fisher first presented his petition to Congress, $9,062 73, making $18,035 73, and deducted the amount of the former award, $8,873, with interest thereon from date of payment, $9,237 79, leaving $8,797 74; which was paid on the 30th of December, 1848.

Under opinions of successive Attorneys General, of 16th February and 8th May, 1849, the Auditor further allowed interest from the 13th July, 1813, when the injury is alleged to have been done, to the said 13th of February, 1832, amounting to $10,004 89—making, in all, $27,675 83 awarded and paid in this case, of which $8,973 is for damages, and $18,702 83 for interest.

The act of December 22, 1854, supplementary to an act therein mentioned, was introduced and passed in the Senate without papers. The case was brought to my notice, under a misapprehension on the part of the Auditor of the amount of principal paid under the act of 1848, and a submission of the question of a further allowance of interest. My decision on that point is annexed; the law being now settled at the treasury, in respect to such cases, that where interest is not granted in express terms, or by necessary implication, it is not allowable.

By the passage of the recited act Congress intended to give Fisher's representatives the benefit of the rejected testimony; but as they had already had the benefit of that testimony in the second award made by the Auditor, and which fact was not known to Congress when they

passed the supplementary act, the particular relief provided for cannot be granted. It seems manifest that Congress did not intend any relief other than the benefit of the rejected testimony, although a re-examination of the case is directed; but if there was authority now to re examine the whole case, and the accounting officers of the treasury should arrive at the conclusion that Fisher's representatives were entitled to compensation for the whole damage claimed, as well that done by the United States troops, for which the allowance was made, as that done by the Indians, which was excluded, inasmuch as Fisher's representatives have received more interest than the whole amount of damage proved, and as no interest on such claims is now allowable, no further payment could be made on this claim. Neither of the acts for the benefit of Fisher's representatives gives interest, or directs the accounting officers to allow it; and there is no general law authorizing the payment of interest in this class of cases, whilst the practice of the government is against it.

A petition to Congress, in this class of cases, is an appeal to the equity and justice of all the people of the United States; and the act of Congress stands like a judgment or decree in equity between individuals, and carries no interest unless given in the judgment or decree.

Upon this state of the case, the act of December, 1854, being imperative, the thing directed having been before done, if you shall think it fit to submit this report to Congress, it will be for that body to repeal the said act, or take such other order in the premises as it may deem proper.

Most respectfully, your obedient servant,

JAMES GUTHRIE,
Secretary of the Treasury.

The PRESIDENT OF THE UNITED STATES.

Endorsed as follows:

I approve the views expressed within, and am not inclined to recommend further legislation in this case.

FRANKLIN PIERCE.

JANUARY 18, 1856.

ATTORNEY GENERAL'S OFFICE, *December* 20, 1848.

SIR: In reply to your inquiry, I beg leave to say that, under the act of Congress of April 12, 1848, for the relief of the legal representatives of George Fisher, deceased, authorizing and requiring the Second Auditor of the Treasury to examine and adjust their claims for spoliations during the war of 1812, on principles of equity and justice, the Second Auditor is very clearly permitted to receive proof of a claim, although he may have previously ruled out the same proof for informality, and reported upon the other claims satisfactorily estab-

lished. Indeed, I think he is required to do it. It is not necessary for Congress to re-enact the law. If the claim be a just one, the act is broad enough to permit it to be allowed. No chancellor would feel at liberty peremptorily and finally to reject it because there was a slip in the forms of proof. I think the Second Auditor has full power under this act to do justice upon the principles which prevail in courts of equity, one of which is, not to permit a just claim to be defeated by an accidental omission or mistake like that in question.

I have the honor to be, very respectfully, sir, your obedient servant,

ISAAC TOUCEY,
Attorney General.

Hon. ROBERT J. WALKER,
Secretary of the Treasury.

ATTORNEY GENERAL'S OFFICE,
February 16, 1849.

SIR: In administering the relief provided by the act of Congress for the legal representatives of George Fisher, deceased, approved April 12, 1848, it being held by the Second Auditor that the value of the property taken or destroyed, with interest upon it, is to be paid as "a fair and full indemnity," it would seem to follow, of course, that the interest should be computed from the time when the property was taken or destroyed by the troops of the United States.

As to the rate of interest, it is not fixed by any contract, nor is interest to be paid in pursuance of any contract. It is to be referred to as a measure of what is deemed, under the laws and practice of this government, a fair indemnity for the detention of the value, and that is six per cent. per annum during the period of the detention.

I have the honor to be, very respectfully, sir, your obedient servant,

I. TOUCEY,
Attorney General.

Hon. ROBERT J. WALKER,
Secretary of the Treasury.

ATTORNEY GENERAL'S OFFICE,
May 8, 1849.

SIR: In the matter of the claim of the representatives of George Fisher, made under the act for their relief of the 12th April, 1848, the two questions you have submitted to this office I have duly considered; they are these:

"*First.* Is the opinion of this office of the 16th February, 1849, upon the decision of the late Second Auditor obligatory upon the present incumbent?"

"*And secondly.* Ought interest to have been allowed under the act of Congress referred to?"

First. The duties of the Attorney General are prescribed by the judiciary act of 1789, and are: "To give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments touching any matters that may concern their departments."

The act does not declare what effect shall be given to such advice and opinion, but it is believed that the practice of the government has been invariable always to follow it. This has been done from the great advantage, and almost absolute necessity, of having uniform rules of decision in all questions of law in analogous cases—a result much more certain under the guidance and decision of a single department, constituted for the very purpose of advising upon all such questions, and with supposed special qualifications for such a duty. In my opinion, this practice should be considered as law.

Second. By reference to the act giving relief in this case, it will be seen that the whole subject of the claim is submitted to the exclusive judgment of the Second Auditor. No other department had any jurisdiction over it. His judgment was made absolute. By the last report of that officer, he did allow interest; and the interest, with the principal then allowed, has been paid to the claimants. This, in my judgment, decides the question as to the title to interest under the act. The Auditor thought—whether correctly or not, is not submitted to me, and I express no opinion upon it—that such was the meaning of the law. His successor, under another rule, perfectly well settled, has no right to disregard the decision. He is bound to esteem it a correct one.—(See United States *vs.* Bank of Metropolis, 15 Pet., 377.)

I have the honor to be, respectfully, sir, your obedient servant,

REVERDY JOHNSON,
Attorney General.

Hon. WILLIAM M. MEREDITH,
Secretary of the Treasury.

Additional papers in connexion with the claim of Fisher's legal representatives, (referred to in the report of the House Committee on the Judiciary, No. 206, and Senate Report No. 446, third session, thirty-fourth Congress.

ORIGINAL AWARD OF MR. MCCALLA.

TREASURY DEPARTMENT,
Second Auditor's Office, April 22, 1848.

SIR: In compliance with the provisions of an act of Congress, entitled "An act for the relief of the legal representatives of George Fisher, deceased," approved April 12, 1848, I have carefully examined the said claim, and on the depositions of Robert G. Haden, H. L. Riviere and Absalom Presnal, have concluded to allow the sum of $8,873, as a full and fair equivalent for the property destroyed by

troops of the United States. This amount I have to request may be paid out of any appropriation applicable thereto, and in the following proportions, in pursuance of instructions from the attorney of administrator:

To David Gordon, one-half of the amount	$4,436 50
To Mrs. Susan E. Gordon, one-third the remaining half	1,478 83
To Hon. E. C. Cabell, attorney for administrator, the remaining two-thirds	2,957 67
Making, as above	$8,873 00

Very respectfully, your obedient servant,

J. M. McCALLA,
Second Auditor.

A. K. PARRIS, Esq.,
Second Comptroller, Treasury Department.

[The depositions of Davis, Harrison, and Turner were not even considered when this award was made.]

The Judiciary Committee, in their report, No. 206, have made several direct issues of fact with Mr. Guthrie. One, very material, as to the precise character of the award in December, 1848. Mr. Guthrie assumes that it was for principal; the committee say it was for interest only, including the $100 previously omitted or left out by mistake. The following official letter of the Second Auditor settles the question. It establishes beyond controversy that the committee are right.

TREASURY DEPARTMENT,
Second Auditor's Office, April 18, 1849.

SIR: By an act of Congress, entitled "An act for the relief of George Fisher's legal representatives, approved April 12, 1848, the Second Auditor of the Treasury is authorized and required to examine and adjust the claims of the legal representatives of George Fisher, deceased, on principles of equity and justice. My immediate predecessor, under the authority given him by the aforesaid act of Congress, awarded the sum of $8,873 for property destroyed by the troops of the United States, engaged in suppressing Indian hostilities in the year 1813; this award is dated April 22, 1848. And by a second award of December 30, 1848, the said Auditor allowed the further sum of $8,797 94, *as interest*, computing the interest from the 13th of February, 1832, the day of the presentation of the claim, to the 30th of December, 1848, the day of the rendition of the award. The legal representatives of George Fisher now interpose the further claim of interest from the year 1813, the year in which the property was destroyed, to the 13th of February, 1832, the date from which the Second Auditor *ex officio* computed the interest in his second award.

Their claim is based upon the fact that the aforesaid Second Auditor referred the question, "when the calculation of interest shall begin?" to the late Secretary of the Treasury, and received through him the

opinion of the late Attorney General in reference to the point. The reference and opinion will both be found among the papers.

The points I wish to present are two: 1st. Is the opinion of the late Attorney General upon the decision of the late Second Auditor obligatory upon me? and 2d. Ought interest to have been allowed under the act of Congress referred to?

The Hon. Secretary of the Treasury will please advise the Second Auditor on these points.

Very respectfully,

P. CLAYTON,
Second Auditor.

Hon. WILLIAM MEREDITH,
Secretary of the Treasury.

The depositions marked "rejected," &c., were mentioned in the December award; but the only consideration given to them was to reject them. Judge Bibb's deposition is conclusive as to this fact: *observe the date or time* at which he swears the depositions were rejected for want of authentication, viz: in December, 1848.

UNITED STATES OF AMERICA, *District of Columbia,* } *scl.*

CITY OF WASHINGTON, *April* 13, 1855.

This day, before me, the undersigned, one of the justices of the peace of the United States, in and for the district and city aforesaid, duly commissioned, sworn, and acting as such, came George M. Bibb, in the aforesaid city, and then and there made oath, that in December, 1848, at the instance of Mr. David Gordon, this affiant prosecuted the claim of the representatives of George Fisher, deceased, before the then Second Auditor of the Treasury, General John McCalla, for the property of said Fisher taken or destroyed by the troops of the United States in the year 1813; and then filed with said Auditor, in support of the claim of the said representatives to an allowance in Addition to to the sum of $8,873, which had been before that time awarded to them by said Auditor McCalla. The case was then opened and re-examined, because of the production of the additional evidence of the Rev. Thomas Berry. This affiant was present and at the table of the said Auditor when he made his statement and requisition certified to the Second Comptroller for the sum of eight thousand nine hundred and seventy-three dollars, ($8,973,) as the principal, with interest thereon from some day in February, 1832, deducting therefrom the former sum of $8,873, which said Auditor McCalla had awarded to said representatives on 22d April, 1848, and interest thereon, as stated in said requisition or certificate addressed to said Comptroller. Said Auditor, in the presence of this affiant, made the statement of the whole amount of property of said Fisher which had been taken or destroyed, which amounted to the sum of seventeen thousand nine hundred and forty-six dollars, and then deducted the one-half thereof, reducing the sum to be allowed to said representatives, as principal,

to the sum of $8,973, as aforesaid, upon which said McCalla allowed interest, commencing in February, 1832, as aforesaid.

When said Auditor McCalla deducted the one-half, as aforesaid, this affiant asked said Auditor why he had deducted the one-half, and thereby reduced the principal sum to be allowed to said representatives to the sum of $8,973 only; to which said McCalla answered he had so done upon the presumption that the Indians had taken and destroyed as much of Fisher's property as the troops of the United States. This affiant stated that the affidavits of Davis, Harrison, and Turner repelled any such presumption, and proved that the property of said Fisher, mentioned by them, was taken by the troops for their use; and that which they did not take to themselves, was destroyed by the troops of the United States, to prevent the Indians from getting it. To this said McCalla replied, that the depositions of Davis, Harrison, and Turner were not legally authenticated, and therefore he rejected them. This affiant suggested that the person certifying the oaths of the witnesses had also certified and styled himself a justice of the peace, and therefore he ought to be presumed to be so, as the contrary was not shown. To this said McCalla respondéd, that he could not so presume.

After Auditor McCalla, in December, 1848, handed to me his requisition or certificate to the Comptroller for said allowance of the sum of $8,973, with the interest thereon commencing in February, 1832, this affiant delivered to the Auditor the protest against said sum of principal and interest, as being too little; which protest is now on file in the Auditor's office, bearing date 29th December, 1848, but endorsed as filed 30th December, 1848.

The affiant further says, in March, 1855, he re-examined the papers in the said case, at the instance of said David Gordon, in consequence of the supplemental act of Congress, approved 22d December, 1854, and filed an argument thereon with the Hon. P. Clayton, the Second Auditor. Upon this examination, the basis of the award of 22d April, 1848, on file, shows the particular articles of property of said Fisher, for which Auditor McCalla allowed compensation, showing deductions of one-half of the valuation. The particulars of these allowances, when correctly added, amount to the sum of $8,973, but, by error in addition, their aggregate value was summed up at only $8,873; and this statement is endorsed; that the depositions of Harrison, Davis, Turner, and Colonel George Fisher were rejected, signed by J. F. Polk, and dated May, 1849; the depositions of Davis, Harrison, and Turner are also endorsed as rejected "by the late Auditor, General McCalla," for want of authentication.

On said examination of the papers in the year 1855, this affiant saw the award of the Auditor, General McCalla, without date, in which it is stated that the depositions of Davis, Harrison, and Turner were considered; and it is therein stated (among other things) that the hides in the tanyard of Fisher could not be used by the troops of the United States; that the crockerywares were probably destroyed by the Indians; that for the smith's tools and the carpenter's tools, the troops of the United States had no use, and that the houses were probably destroyed by the Indians. This award, so without date, was not shown to this affiant in 1848; it was not among the papers when

said requisition or certificate to the Second Comptroller was delivered to this affiant in December, 1848, and when this affiant delivered to said Auditor McCalla the protest before mentioned. The award of 22d April, 1848, when the error in addition is corrected, and the said principal sum allowed in December, 1848, are identically the same sum. So that if Auditor McCalla did, in December, 1848, consider the depositions of Davis, Harrison, and Turner, he gave no effect to them, but must have considered them as of no avail for want of authentication; otherwise he could not have taken off the one-half upon the presumption that the one-half of the said property had been taken or destroyed by the Indians. The authentication of the depositions of Davis, Harrison, and Turner, by the certificate of the governor of the State of Alabama, was not affixed to them until in the year 1850, October 19, as is seen by inspection.

This affiant states that, for his services aforesaid, rendered in the year 1848, the said David Gordon paid him five hundred dollars; that, for his services in writing the argument in 1855, the said Gordon gave his note to this affiant for three hundred dollars, without condition or contingency, dated 28th March, 1855, payable at sixty days after date, and also a writing of same date, promising to pay this affiant five per centum on the *one-half* of whatever sum should be allowed to the representatives of George Fisher, deceased, under the said supplemental act of 1854. This latter writing for said contingent per centage this affiant has released and delivered up to said Gordon, and said Gordon has released this affiant from further prosecution of said claim of the representatives of George Fisher; and this affiant hath not now any interest whatever, of profit or loss, in expectancy upon the event of the application of the said representatives under the said act of 1854.

GEORGE M. BIBB.

Sworn to and subscribed before me, on the day and year and place stated in the caption.

T. C. DONN, *J. P.*

TREASURY DEPARTMENT,
Second Auditor's Office March 28, 1856.

SIR: In reply to your letter of this date, asking what depositions in the case of the legal representatives of George Fisher, deceased, bear the endorsement "rejected for the want of authentication," I have the honor to report that the following depositions bear that endorsement, viz: Wiley Davis, Samuel Harrison, and James Turner.

Very respectfully, your obedient servant,

P. CLAYTON,
Second Auditor.

Hon. W. K. SEBASTIAN,
Chairman Committee of Indian Affairs, Senate U. S.

Mr. Guthrie alleges that the claimants had the benefit of the testimony marked "rejected for the want of authentication" in December, 1848. The following official certificate of Governor Collier, of Alabama, shows that these depositions were *not* authenticated until 19th of October, 1850, nearly two years subsequent to the time at which Mr. Guthrie assumes to say "they had that before:"

EXECUTIVE DEPARTMENT,
Montgomery, Alabama.

I, Henry W. Collier, governor of the State of Alabama, do hereby declare and make known to all persons whom it may concern, that Thomas Simmons, whose signature appears to the foregoing certificate, was, at the time of signing the same, and at the date thereof, an acting justice of the peace in and for the county of Macon, in said State of Alabama, and that full faith and credit are due to all his official attestations as such.

In testimony whereof, I have hereunto set my hand and caused the seal of the State to be affixed, at Montgomery, this nineteenth [L. S.] day of October, A. D. 1850, and of the independence of the United States of America the seventy-fifth.

H. W. COLLIER.

By the Governor:

W. GARRET,
Secretary of State.

[The depositions marked "*rejected*," &c., were not regarded as entitled to any validity, without legal authentication. The following letter to the chairman of the Senate's Committee on Indian Affairs is conclusive as to that point.]

WASHINGTON, D. C., *June* 28, 1856.

SIR: I have the honor to make this brief statement in reference to the endorsements made by me while I was chief clerk in the office of the Second Auditor of the Treasury on certain depositions in the account of George Fisher, deceased, viz:

That, according to the best of my recollection, said endorsements were made at the time when, by direction of the Auditor, they were taken from among the papers and delivered or sent to Mr. Gordon for the purpose of having the certificates of the justices of the peace, which were annexed to them, authenticated—without which *they were inadmissible as testimony in the case.*

I have the honor to be, very respectfully, your obedient servant,

J. F. POLK.

Hon. W. K. SEBASTIAN, *U. S. Senate.*

TREASURY DEPARTMENT,
April 4, 1855.

SIR: I find that the Second Auditor, under date of the 22d of April, 1848, rejecting certain depositions for want of sufficient authentication, awarded to the representatives of George Fisher the sum of $8,873, as a full and fair equivalent for the property destroyed by the United States troops, and that said sum was accordingly paid to the representatives. I also find that the said Auditor again took up the said case, under an opinion of the Attorney General as to the rejected depositions, and made another award, in which he allowed, on the whole case, for the property destroyed by the United States troops, the sum of $8,973, being $100 more than allowed by the first award;

and on this latter award allowed interest, at the rate of six per cent., from the 13th of February, 1832, the time when Congress was first petitioned to settle the claim, and deducted therefrom the first award of $8,873, leaving a balance of $8,797 94, which was paid the representatives.

I further find that, upon the opinion of Attorney General Toucey, you took up the case and allowed interest upon the last award of $8,973 from the 13th of July, 1813, to the 13th of February, 1832, and allowed the further sum of $10,004 89.

You will thus see that the sum awarded to Fisher's representatives by your predecessor, under his second award, embracing the rejected depositions, has been fully paid, with interest from the 13th of February, 1813, and that there was not the two sums of $8,873 and $8,973, constitutiug $17,846, awarded for the damages done by the United States troops, and, consequently, there is no such balance due for interest or otherwise, as you suppose.

In my opinion, the second award of your predecessor, allowing interest from 1832 to the time application was first made to Congress for compensation, was all that equity and justice called for, and that Attorney General Toucey's opinion ought not to have been applied to the case as it stood, and did not justify the further allowance of interest.

As the second award of your predecessor was made on the basis of the rejected depositions on making his first award, the act of 1854, authorizing those depositions to be considered, and a further award made, was for the want of the proper information; and as they have already been considered and acted upon, you are not authorized to revise the action of your predecessor under the provision of the act of 1854, but should make a detailed report of the case to me, so that I may lay it before the President, to be presented to Congress for their consideration.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

P. CLAYTON, Esq.,
Second Auditor of the Treasury.

The papers are herewith returned.

TREASURY DEPARTMENT,
Second Auditor's Office, January 20, 1858.

SIR: In reply to your letter of this date, asking for a specific list from the testimony marked "rejected" in the Fisher case, I have the honor to send herewith a statement as taken from the testimony referred to.

Very respectfully, yours,

T. J. D. FULLER,
Second Auditor.

Hon. A. IVERSON,
Chairman Committee on Claims, U. S. Senate.

Statement of the property of George Fisher, deceased, taken, used, or destroyed by the troops and militia in the service of the United States in the year 1813.

Between 500 and 600 head of cattle, at that time worth $10 per head.

86 head of drove hogs, for which he paid $14 per head.

350 head of stock hogs, worth, at that time, $5 per head.

100 acres of corn on Bassett's creek.

10 or 12 barrels of groceries, and between 8 and 12 hundred dollars' worth of goods, and a quantity of other property, destroyed on the plantation on Bassett's creek.

Planted upwards of 100 acres of corn on the Alabama river, below Fort Claiborne, destroyed by the public horses, turned in by order of Colonel Milton; old corn, at that time, was difficult to be had at from $2 50 to $3 per bushel.

The above is the testimony of Samuel Harrison and James Turner.

According to the testimony of Willie Davis:

500 head of cattle, or upwards; 86 head of large Tennessee pork hogs, for which he paid $14 per head; 350 head of stock hogs, $5 to $6 per head; some $1,000 or $1,200 worth of dry goods; some 8 or 10 barrels of whiskey; 2 or 3 barrels rum or brandy, in a store on Bassett's creek; fully 100 acres of corn planted on Bassett's creek; something like 120 acres planted in corn on the Alabama river, corn scarcely to be purchased at *$— and 50 cents per bushel, besides a good crop of peas and pumpkins; cattle, quick sale at $10 per head. The said Fisher lost considerable other property not recollected; all of which was destroyed by the United States troops.

Thomas Berry's deposition states that the quantity of corn, per acre, in his fields at Fort Claiborne, was at least fifty bushels to the acre, and probably more.

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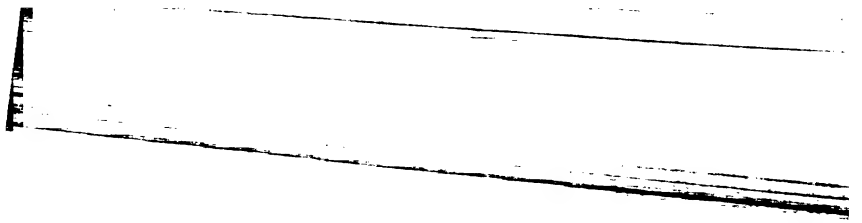
* Written thus: — dollars and fifty cents.



35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 119.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1858.—Ordered to be printed.

Mr. WILSON made the following

REPORT.

[To accompany Bill S. 203.]

The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Charles Porterfield, deceased, having had the same under consideration, beg leave to adopt a former report made at the last session of Congress, by Mr. Evans, which is as follows, to wit:

"In May, 1779, the legislature of Virginia passed an act establishing a land office for ascertaining the terms and manner of granting waste and unappropriated lands.

Under this act, any person might procure from the treasury, on paying a certain price, a warrant to locate and obtain a patent for any waste or unappropriated land, with a proviso that no entry or location of land shall be admitted within the country and limits of the Cherokee Indians, or on the north side of the Ohio river, or on lands reserved for any particular nation or tribe of Indians, &c. The warrants under this act were called treasury warrants.

It having been ascertained, by an extension of the dividing line between Virginia and North Carolina, that a considerable part of the land previously set apart by Virginia for the discharge of her promises to her officers and soldiers of her State and continental line lay within the State of North Carolina, Virginia, by an act passed in November, 1781, enacted that all that tract of land included within the rivers Mississippi, Ohio, and Tennessee, and the North Carolina line, shall be, and the same is hereby, substituted in lieu of such land so fallen into the State of North Carolina, to be in the same manner subject to the claims of said officers and soldiers.

Colonel Charles Porterfield, of the Virginia State line, was mortally wounded at Gates' defeat, near Camden, in August, 1780, and soon after died of the wounds, leaving neither wife nor children. His brother, Robert Porterfield, as his heir-at-law, received from the State of Virginia, under the laws of that State, a warrant for 6,000 acres (for three years' service) in December, 1782. He also was entitled, by purchase, to a warrant issued to Thomas Quarles, for three years'

service as lieutenant in the State line, for 2,666⅔ acres, dated the 12th of June, 1783.

In pursuance of these warrants, and under the authority of laws subsequently passed, appointing a surveyor and a board of officers, the said Robert Porterfield, in August, 1784, made, within the district above described, five entries, amounting in all to 6,133⅓ acres; but the country was in the possession of the Indians, who were so much dissatisfied with the inroads into their country, and the location of so large an amount of these warrants, that an Indian war was apprehended. The governor of Virginia, on the 6th of January, 1785, under the direction of the legislature, issued a proclamation, prohibiting those who had made entries of land within the said Territory from proceeding further in taking possession or surveying the land, and commanding the commissioners, surveyors, and all persons to withdraw from the said land. In consequence of this proclamation, the said Robert Porterfield was prevented from perfecting his entry by survey and patent. This proclamation continued in force until the United States, by treaties made subsequently in 1794 and 1795 with the Cherokee and Chickasaw Indians, the country lying to the south of the Tennessee river was guarantied to them as a hunting ground, and all persons were prohibited from entering on, or taking possession of, the said territory.

The country remained in this situation until 1819, when the obstruction of the Indian title was removed by treaty; and in convenient time afterwards, to wit: in 1824, the said Robert Porterfield procured his entries to be perfected by survey, and a patent issued to him from the governor of Kentucky, which had, in the meantime, become a State, in pursuance of certain stipulations between Virginia and Kentucky, when the latter became a separate State.

After having thus perfected his title, the said Robert Porterfield took possession of his said land, and by an agent granted leases to several persons whom he found living on the land; but these tenants were subsequently evicted and turned out of possession, under indictments of forcible entry and detainer, by persons claiming title to the same land, under a grant to George R. Clark, of an older date. To the understanding of this claim it is necessary to state some facts.

Under certain treasury land warrants, the said George R. Clark made entries of two tracts of land—one for 36,962 acres, and another for 37,000 acres—within the district of country which the legislature of Virginia had set apart for military land warrants by the act of November, 1781. These entries were made in 1780 and 1781, prior to the passage of the act of November, 1781. The surveys were made in 1794, before the date of the proclamation of the governor of Virginia, and patents were issued in September, 1795.

The said patents being the oldest, the said Robert Porterfield was disposed to give up his claim, and to ask Congress to give him other lands in lieu of that of which he had been deprived. He accordingly presented a petition to the 24th Congress; but, as is alleged in this petition, he was advised by the late B. Watkins Leigh, then a senator of Virginia in Congress, that his claim would be likely to be refused until it had been decided by the courts. That Clark's title was para-

mount; and the said Leigh expressed the opinion, as did other eminent lawyers, that the entry and patent of the said Clark was void, being within "the country and limits of the Cherokee Indians," which were excepted from entry by act of May, 1778. Under this advice, he filed a bill in the circuit court of the United States for the Kentucky district, against Meriwether L. Clark and others, who claimed under the said grants to George R. Clark, on the 18th of July, 1836.

In the prosecution of this suit much time and money were expended. Many witnesses were examined, and a large amount of testimony as to the right of the Indians to this tract of country was procured from the colonial office in England. After various continuances, the case was finally brought to a hearing on the 13th November, 1841, when the bill was dismissed with costs. An appeal was taken to the Supreme Court, where the appeal was dismissed.

Under these circumstances, your committee are of opinion that as the Virginia grant of the land was in pursuance of a contract made with her officers, she would be bound to reimburse to her grantee the land which he lost by the uncertainty of her own laws. And as Virginia, by her cession of all her lands to the United States, has not now the means of complying with the contract, the United States ought to do for them what Virginia would now do if she had the power; and as there is still remaining a large part of the 2,500,000 acres set apart for the satisfaction of Virginia military land warrants by the act approved August 31, 1852, a bill is herewith reported for their relief."

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 120.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1858.—Ordered to be printed.

Mr. EVANS made the following

REPORT.

[To accompany Bill S. 205.]

The Committee on Revolutionary Claims, to whom was referred the memorial of Susannah Hayne Pinckney, sole heir of Captain Richard Shubrick, having had the same under consideration, beg leave to submit the following report:

Richard Shubrick was a captain in the 2d regiment of the South Carolina line of the continental army of the revolution. He died in Charleston, of fever, whilst in the service, on the 8th November, 1777, leaving a widow and two minor children. The widow and one of the children have been dead many years, and the petitioner is the sole survivor and heir of the said Captain Shubrick.

The prayer of the petition is, that she may be paid the seven years' half-pay which was provided for in the resolution of Congress of 24th of August, 1780, to the widow and minor children of officers of the army who had died, or should thereafter die, in the service.

To a correct understanding of this case, it will be necessary to enter somewhat into detail as to the several acts or resolves on which the merit of the petition depends, and into a detail of the history of the case, as they appear in the proceedings of Congress.

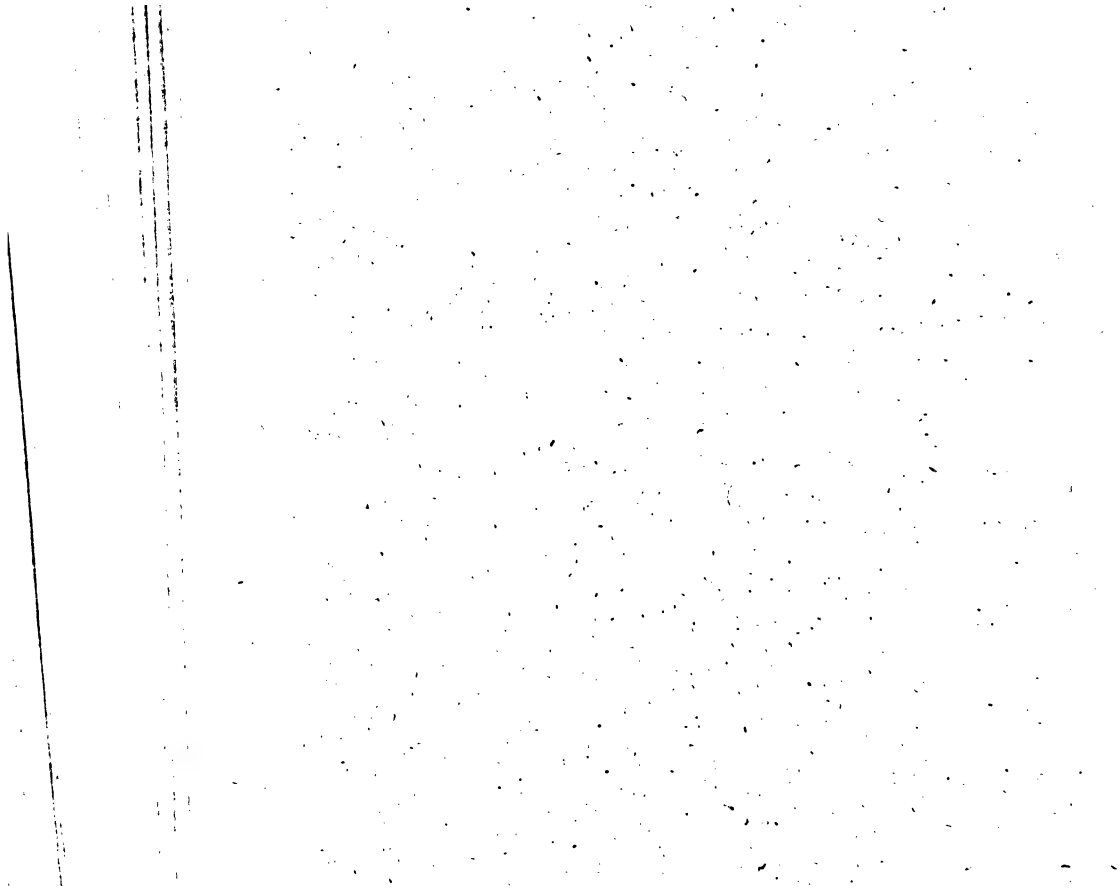
On the 15th of May, 1778, on the report of a committee, Congress "*Resolved unanimously*, That all military officers commissioned by Congress who now are, or may hereafter be, in the service of the United States, and shall continue therein during the war, and not holding any office of profit under these States, or any of them, shall, after the conclusion of the war, be entitled to receive annually, for the term of seven years, if they live so long, one-half of the present pay of such officer." On the 24th of August, 1780, Congress took into consideration the report of the committee on the memorial of the general officers, and, thereupon, it was "*Resolved*, That the resolution of the 15th of May, 1778, granting half-pay for seven years to the officers of the army who should continue in service to the end of the war, be extended to the widows of *those* officers who *have* died, or shall hereafter die, in the service, to commence from the time of such officer's death,

and to continue for seven years; or, if there be no widow, or in case of her death or intermarriage, the said half-pay be given to the orphan children of the officer dying as aforesaid, if he shall leave any, and that it be recommended to the legislatures of the respective States to which such officers belong, to make provision for paying the same on account of the United States."

On the 4th of May, 1785, on the report of a committee to whom had been referred a letter of the widow of General Wooster, who was killed in battle prior to the 15th of May, 1778, it was "*Resolved*, That it be recommended to the State of Connecticut to settle with and pay the widow of the late Brigadier General David Wooster the seven years' half-pay of a brigadier general, agreeably to the resolution of February 28, 1785, the amount whereof they are authorized to charge to the United States." It also appears from the journals of Congress, vol. 2, p. 823, that Congress ordered as follows: That the eldest son of General Warren, and the youngest son of General Mercer, be educated from this time (April 8, 1777,) at the public expense; and, at a subsequent period, Congress made further provision for the family of General Warren. Both these officers were killed before the 15th of May, 1778. This is all the legislation which applies to this case. The history of the action of Congress on this particular case is as follows: At the 1st session of the 2d Congress, (1791,) Thomas Shubrick, on the part and behalf of Mary and Susannah Shubrick, the minor children of the said Richard Shubrick, presented a petition praying that they might be paid the seven years' half-pay under the resolution of August 24, 1780. Upon this application, the Secretary of War, General Knox, made a report recommending its payment, and submitted, along with it, a list of upwards of forty cases in which the States had paid, agreeably to the recommendation of Congress contained in the said resolution of the 24th August, 1780.

There does not appear to have been any final action on this petition, and the application was not renewed until the 23d Congress, since which time the claim has been several times before both Houses of Congress, and generally reported on favorably. In 1842 a bill reported by the Committee on Revolutionary Claims, in the House of Representatives, being under consideration, it was referred to the Committee on the Judiciary to report "whether, in a legal point of view, if there were no statutes of limitations in the way, the widows and orphans of officers of the continental line of the revolutionary army who were killed or died in the service prior to the 15th May, 1778, (the day the act granting seven years' half-pay to officers who should serve to the end of the war was passed,) are or are not entitled to the seven years' half-pay granted by the act of 24th August, 1780, to the widows and orphans of all officers who had died, or should die, in the service." In pursuance of this reference, a very full report was made, maintaining the proposition that those who died, or were killed in the service, anterior to the resolution of the 15th May, 1778, were not entitled. Indeed, if the resolution of 24th August be construed by itself, there is no reasonable doubt as to its construction. It extends the benefit of the resolution of 15th May, 1778, to the widows or orphans of *those* officers who had died, and should thereafter die, in

the service. What widows and orphans are here meant? It is clear the words "the widows and orphans of *those* officers" mean those mentioned in the preceding part of the sentence, viz: the officers who, at the date of the resolution, were, or might thereafter be, in the service, and should continue to the end of the war. The object of the resolution of August 24, 1780, was, in case of the death of an officer who, if he had continued in the service to the end of the war, would have been entitled to the seven years' half-pay, to substitute his widow or children in his place. It is not known to your committee that Congress has ever sanctioned any other construction of the resolve of August 24, 1780, except in the case of the widow of General Wooster, but it is very certain that many of the States, acting on the authority of that case, were influenced by a very liberal construction of the words "have died," have paid by far the greater number of the cases without reference to the time of death. So far as is known to your committee, there is only one other case like this unprovided for, and, under these circumstances, your committee have come to the conclusion to recommend the payment of this claim, and report a bill for that purpose.



35H CONGRESS, 1st Session. | SENATE. | REP. COM. No. 121.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1858.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 206.]

The Committee on Naval Affairs, to which was referred the petition of lieutenants in the United States revenue marine service, who were attached to the United States naval squadron in the West Indies during the Florida war in 1836, 1837, 1838, *and* 1839, *praying to be allowed the same compensation as officers of like grade in the navy, have had the same under consideration, and report:*

That an elaborate report was made by the Committee on Naval Affairs of the Senate on this case, at the first session of the 33d Congress, which report is as follows:

IN SENATE, *July* 25, 1854.

Mr. MALLORY made the following report:

The Committee on Naval Affairs, to which was referred the petition of lieutenants in the United States revenue marine service, who were attached to the United States naval squadron in the West Indies, during the Florida war in 1836, 1837, 1838, *and* 1839, *praying to be allowed the same compensation as officers of like grade in the navy, have had the same under consideration, and report:*

That Lieutenants Osmond Peters and George Clark, lieutenants in the United States marine service, allege that they, with other officers of their corps, were placed under the orders of the Secretary of the Navy, for duty in the Gulf of Mexico during the Seminole hostilities in Florida and the Mexican war, and that they did perform, while thus detached from their own duties as revenue officers, and acting in connexion with the navy, and under the orders of its Secretary, valuable public services. That their duties, while thus detached, and acting as naval officers, entailed upon them greatly increased expenditures, and exceeded their pay.

The memorialists have heretofore appealed to Congress, and the

merits of their case seem to have been thoroughly investigated. Bills for their relief were severally reported in the Senate by Mr. Davis, from the Committee on Commerce, 2d session 26th Congress; by Mr. Woodbury, from the same committee, 2d session 27th Congress; by Mr. Bayard, from the same committee, 1st session 28th Congress; and by Mr. Bayard, from the same committee, 2d session 28th Congress.

These bills were never acted upon, and the memorialists are still without relief.

Your committee is entirely satisfied that many officers of the revenue were taken from their legitimate duties, assigned to the Navy Department, and did co-operate with the navy upon the occasions referred to. The public records, official despatches of military and naval commanding officers, &c., render this fact notorious. And it is equally satisfied that the expenses of officers while thus co-operating with the navy, at a distance from their stations and families, are ever, and must necessarily be, increased.

Under these circumstances, are the memorialists entitled to relief?

Their pay was regulated and determined with reference to their duties, which are usually performed in or about port—certainly within a collection district, and within the daily reach of their homes and families. These duties are onerous and responsible, and essential to the due protection of the revenue. Their pay was not assimilated to, or regulated by, that of naval officers, but based upon the character and sphere of their duties, which are essentially civil, and limited to the several collection districts of the country. They were not organized or designed as a branch of the naval defences of the country, nor have they ever been so regarded—receiving an appointment during good behaviour from the President, without the concurrent action of the Senate; and they are not entitled to pensions, bounty lands, or other similar relief extended to the members of the two branches of our military defences.

The ninety-eight section of the general revenue act of March 2, 1799, entitled "An act to regulate the collection of duties on imports and tonnage," (United States Statutes at Large, vol. 1, page 699,) in determining the number and grade of these officers, provides "that the said revenue cutters shall, whenever the President of the United States shall so direct, co-operate with the navy of the United States, during which time they shall be under the direction of the Secretary of the Navy; and the expenses thereof shall be defrayed by the agents of the Navy Department."

Though this proviso embraces the vessels only, it has ever been construed by the department to include the officers, and they have been, from time to time, assigned to duty with the navy.

The act of February 25, 1799, entitled "An act for the augmentation of the navy," (United States Statutes at Large, vol. 1, page 623,) authorized "the President to place on the naval establishment" revenue cutters, &c., "*and thereupon the officers and crews of such vessels may be allowed, at the discretion of the President of the United States, the pay, subsistence, advantages, and compensations, proportionably to the rates of such vessels, and shall be governed by the rules*

and discipline which are, or which shall be, established for the navy of the United States."

The act of April 18, 1814, entitled "An act granting pensions to the officers and seamen serving on board the revenue cutters," in certain cases, (United States Statutes at Large, vol. 3, page 127,) provides for placing the "officers and seamen of the cutter service, wounded or disabled while co-operating with the navy, upon the navy pension list, on an equal footing with the officers and men of the navy in like cases."

Upon inquiry at the Navy Department as to its practice in such cases, the Secretary, in his letter of July 17, 1854, says:

"The Fourth Auditor informs me that he has not been able to discover any case except one, and he believes there is no other, in which an officer of the revenue service has been allowed naval pay while co-operating with the navy. The single case to which he alludes is that of Captain Ezekiel Jones, formerly of the revenue service, who received the difference between the pay and rations of a commander of a revenue cutter and those of a lieutenant commanding in the navy, under a special act passed for his relief on the 3d March, 1839."

The case of Ezekiel Jones, to which the Secretary alludes, differs in no respect from that of other officers of his corps serving with the navy at and since the date of his service; and upon the presentation of it to Congress, the following special report was made and a bill passed for relief:

HOUSE OF REPRESENTATIVES, *January* 27, 1838.

Mr. INGHAM, from the Committee on Naval Affairs, made the following report:

The Committee on Naval Affairs, to which was referred the petition of Ezekiel Jones, respectfully report:

The petitioner states that, in obedience to orders from the President of the United States, as contained in letters from the Secretaries of the Treasury and the Navy, of the 6th and 9th of January, 1836, he being then in command of the revenue cutter "Washington," sailed for Tampa Bay, and served in conjunction with the navy of the United States until the 9th of July, 1836, when he was relieved and ordered on the Portland station; that as he was, during this period, acting with the naval force of the United States, and was in fact a part of it, and subject to all the increased expenses of an officer of the navy in like command; and, having faithfully discharged all his duties, he believes himself honestly entitled to the pay of an officer of like rank in the navy, and he therefore prays that the same may be allowed him.

The facts are fully proved, as appears by the accompanying documents, marked A, B, C, D, and E.

By the 12th section of the act of the 1st July, 1797, the President is authorized to increase the strength of the revenue cutters, and to cause them to be employed in defending the sea coast, &c.; and by the act of 25th February, 1799, entitled "An act for the augmenta-

tion of the navy," the President was authorized to place on the naval establishment and employ accordingly any of the revenue cutters which had been increased in force under, and in virtue of, the above mentioned act, and to allow the officers and crews of such vessels, at his discretion, the pay, subsistence, and advantages, proportionably to the rates of such vessels.

By the 98th section of the act of the 2d of March, 1799, it is provided that the revenue cutters shall, whenever the President shall so direct, co-operate with the navy, during which time they shall be under the direction of the Secretary of the Navy, and the expenses thereof shall be defrayed by the Navy Department.

The act of the 25th February, 1799, above referred to, seems to proceed on the ground of making compensation, in some measure, according to the character or grade of the services rendered, and it is difficult to see why it ought not to be so.

The amount of salary varies with the rank or grade of those who may be entitled to it, not because they are of different grades, but because the services to be performed are of a different character. A post captain is entitled to receive four thousand dollars per annum; not because he is post captain, but because of the nature of the duties and the high responsibilities which are imposed upon him by law, as such, and which he is bound to perform. The service is that to which the compensation has reference, and not the rank of the officer by which it is rendered. This view of the subject is fully sustained by the spirit of the act of 3d March, 1835, to regulate the pay of the navy, in which it is declared that "officers temporarily performing the duties belonging to those of a higher grade, shall receive the compensation allowed to such higher grade while actually so employed."

It appears that the petitioner, while serving in conjunction with the naval force, in the manner stated, rendered essential service to the country, and performed all the duties assigned him with great fidelity and ability, for which he deserved and received the highest commendations of his superiors in command.

The committee are, therefore, of opinion that the petitioner is justly entitled to the same pay to which an officer of like grade in the navy would be entitled for like services, and therefore report a bill:

Be it enacted, &c., That the proper accounting officers of the treasury be, and they are hereby, authorized to allow to Ezekiel Jones, for his services as commander of the revenue cutter Washington, while acting in conjunction with the navy of the United States, in 1836, the same amount of pay as a lieutenant in the navy would be entitled to receive for like services, deducting therefrom the sum which he has already received therefor.

Approved March 3, 1839.

Your committee is unable to account for the non-compliance of the proper accounting officers of the government with the provisions of the act of 25th February, 1799, above recited; but the Secretary of the Navy's letter shows that it has been inoperative. It is the every day practice of Congress to compensate the employés of the country

for all services performed beyond those of their special office, by extra compensation; and upon this point may be cited the extra pay to the exploring squadron; to Lieutenant Maury, of the observatory; to Lieutenant Dahlgren, of the ordnance; to Lieutenant Herndon, of the Amazon exploration; to the California squadron; to officers doing duty as pursers; to navy agents acting also as pension agents, &c.

These frequent acts of relief are placed upon the ground that all salaries, pay, and emoluments, are based upon official duties and responsibilities.

The pay of a revenue captain is twelve hundred dollars per annum, (and the pay of the lieutenants is graduated by his,) was doubtless determined by the consideration that his duties, circumscribed by a collection district, and performed under the immediate orders of the collector of the customs, could rarely incur responsibility, and that they belonged to the civil, and not the military, department of the government; and the pay of a naval lieutenant—which grade, in several respects, is more analogous to that of the revenue captains' than any other of the navy—was probably fixed at $1,500 per annum, in view of the wider sphere and more responsible character of his duties.

When the officers of the revenue marine are called upon to co-operate with the navy, therefore, it seems but reasonable that, with their increased duties and responsibilities, they should receive the increased pay.

Your committee has deemed it proper to report a general bill, whose provisions are designed to embrace not only the case of the memorialists, but the officers of their branch of the public service generally; and, therefore, adopts the bill brought forward in the Senate by Mr. Woodbury in 1841, and subsequently by Mr. Bayard in 1844.

A BILL increasing the pay of certain officers of revenue cutters while serving in the navy of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the President of the United States shall deem it for the public interest that any portion of the officers and seamen belonging to the revenue cutter service shall be attached to, or co-operate with, the naval service of the United States, and shall order them to so act and co-operate with said naval service, said revenue cutter officers, while performing such duty, shall receive, in lieu of the pay and emoluments now provided by law, the pay hereinafter provided, viz: All such revenue cutter officers of the rank of captain in said service shall receive *at the rate of* fifteen hundred dollars per year; all such officers of the rank of first lieutenants, *at the rate of* twelve hundred dollars per year; all such officers of the rank of second lieutenants, *at the rate of* eleven hundred dollars per year; and all such officers of the rank of third lieutenants, *at the rate of* ten hundred dollars per year; which said sums shall be all the pay,

emolument, or allowance, made to such officers while so employed, except one ration each per day.

SEC. 2. *And be it further enacted*, That all officers of said revenue cutter service, who may have been, since the thirty-first day of December, one thousand eight hundred and thirty-five, ordered to co-operate with the naval service of the United States, and have actually so co-operated, and the heirs and legal representatives of such deceased officers as may have so co-operated with the naval service since the said last-mentioned period, shall be entitled to receive the additional pay provided in the first section of this act, during the time said officers were so employed: *Provided, however*, That such officers as have heretofore received any additional pay or emolument, on account of such service, shall not be entitled to the retrospective benefit of this act unless the amount of such additional pay or emolument was less than that allowed by this act.

Your committee adopt the same as a part of this report, and report a bill accordingly.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 122.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1858.—Ordered to be printed.

Mr. EVANS submitted the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of Sarah Smith Stafford, only daughter of James B. Stafford, an officer in the navy of the revolution, having had the same under consideration, beg leave to submit the following report:

The petitioner represents herself to be the only daughter of James B. Stafford, who was a midshipman, and acted as lieutenant on board the Alliance, a vessel of war during the American revolution, commanded by Commodore Barry.

Whilst cruising off the coast of Ireland, he was selected by his commander to undertake the hazardous and perilous enterprise of carrying to Henry Laurens, then a prisoner in the tower of London, an important despatch from the Congress of the United States. He was accordingly landed in the night time at Wexford, from whence, by the aid of friends, he travelled on foot under a disguise to London, where, by the assistance of a relative, he procured admission to the tower, safely delivered his message, and succeeded in making his way back to Wexford, and from thence on board of the Alliance, which had been cruising off the coast during his absence. These facts are supported by as satisfactory evidence as could be reasonably expected after so long a time. The prayer of the petition is, that, in consideration of this important and perilous service, the petitioner, as his daughter, may be paid the half-pay of a lieutenant in the army.

It requires no argument to prove that this case is not embraced within any of the resolutions granting half-pay to the officers of the army who served to the end of the war. The reasons which induced this offer did not apply to the navy. Whilst the officers of the army were daily leaving the army in order to provide subsistence for their suffering families at home, which their depreciated pay did not enable them to do, the officers of the navy were reaping large profits from the captures made on the high seas. It appears from the journals of Congress that the sales in France of the prizes captured by the Bonne Homme Richard and the Alliance amounted to a large sum, (see 4th

Jour., 653,) of which it is presumed Lieutenant Stafford received his share. It appears, also, from the journal of Congress that the half-pay of the officers was refused by the Congress on the 16th of May, 1785, on the application of the widow of John Young, commander of the sloop of war Saratoga. There is no claim of right; and if anything is granted, it must be a gratuity.

The question, therefore, presented by the petition is, whether there is anything in the case so peculiar as to require a departure from the course heretofore pursued. There is no doubt the services rendered were meritorious, and accompanied by hazard; but if Congress were to undertake at this time to give gratuitous rewards to the children and grandchildren of all who rendered like service during the revolution, the treasury, even if full, would be insufficient to satisfy all the demands upon it.

Your committee are of opinion that it is the duty of Congress to satisfy every just demand, and to fulfill every promise made to those who periled all to achieve our independence, but there is no obligation or expediency which requires or authorizes the extension of its benevolence to those who rendered no service, and whose only claim is derived from those who never asked any reward themselves; they, therefore, recommend that the prayer of the petitioner be refused.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 123.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1858.—Ordered to be printed.

Mr. EVANS submitted the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the memorial of the heirs of Colonel Samuel Hammond, having had the same under consideration, submit the following report:

The petitioners are the children of Colonel Samuel Hammond, who served in the war of the revolution, in the militia service of the State of South Carolina, as captain, major, and colonel. The memorial states, in substance, that at the commencement of the war he resided in the State of Virginia, where he was actively engaged in defence of that State, and was engaged in several military expeditions and battles; that in 1779 he removed to South Carolina, and from that time to the end of the war he was almost constantly engaged in the military service. He was at the assault on Savanah, and after the surrender of Charleston, in May, 1780, he participated in nearly all the battles which were fought in the upper part of that State and in North Carolina. He was at the Cowpens, King's mountain, Guilford, the siege of Ninety-six, and the battle of Eutaw, by which the enemy were driven into Charleston and the whole interior of the State reconquered from the dominion of the English troops. That for those services, and many sacrifices of money and property, he never received any remuneration, except a pension under the act of June 7, 1832, of $600 per annum, until his death, in 1842. The prayer of the memorial is, that the children of Colonel Hammond may be put on the same footing as the children of officers of the continental line, and paid the same amount as they would be entitled to if their father had been a colonel in the regular army.

The evidence furnished is the same as that upon which the pension of Colonel Hammond was allowed, and some historical notices of him, in books relating to the events of the revolutionary war. These furnish no evidence of any pecuniary debt due to him, or losses of property for which any indemnity was due to him from the government of the United States. But they show that he was an active and enterprising officer, and rendered very important and useful services in the memorable struggle to reconquer the State of South Carolina, which

had been almost entirely subjugated after the fall of Charleston. But these services, however great, (and your committee would not in the smallest degree detract from the merit of them,) were such as were rendered by many others, who have never received any compensation whatever, not even the pension which Colonel Hammond received for a period of ten years.

During the long continuance of the war, (a period of great suffering and privation,) with few exceptions, every patriot did his duty according to his station and ability. Congress, under a very pressing emergency, by the advice of the commander-in-chief, promised to those officers then in the service of the United States half-pay for life, on the condition of their continuing in the service to the end of the war.

The benefit of this contract has never been enlarged, except in a few extraordinary cases, and your committee are of opinion that in the present state of the treasury it would be unwise to inaugurate a new class of claimants, the extent of which can scarcely be conjectured. If the door is once opened, the applications will be by hundreds, if not thousands, who have, or at least think they have, equal merit with these petitioners. Your committee, therefore, recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioners be not granted.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 124.

IN THE SENATE OF THE UNITED STATES.

MARCH 17, 1858.—Ordered to be printed.

Mr. EVANS submitted the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the memorial of Jane M. Kean, Mary A. Reynolds, and Catharine E. Kean, heirs of Roger Kean, deceased, having examined the same, beg leave to report:

The petitioners represent themselves to be the children of Roger Kean, who was first a lieutenant, and afterwards commander, of a private armed vessel, named the Holkar, fitted out at Philadelphia, and was a very successful cruiser against the enemy in the war of the revolution. The prayer of the petitioner is, that the officers of the national navy, and of private armed vessels, may be put on the same footing as the officers of the army of the revolution. The only claim which officers of the army or their decendants have on the government are such as arise from the resolution of October 21, 1780, by which half-pay for life was promised to all officers who should continue in the army to the end of the war, or to such supernumeraries as should be displaced by the reorganization of the army, then about to take place. The reasons, so far as we can learn them from contemporaneous history, applied solely to the army. Many attempts were made to enlarge the resolution, so as to comprehend other classes, as appears by the resolution of the 26th of January, 1784, which is as follows:

"*Resolved*, That half-pay cannot be allowed to any officer, or to any class of officers, to whom it has not heretofore been expressly promised."

In the Journal of Congress, May 16, 1785, volume 4, page 518, it is stated that, on the report of a committee, to whom was referred the petition of Johannah Young, widow of the late John Young, commander of the sloop-of-war Saratoga, in the service of the United States, praying for a resolution to entitle her to half-pay, it was resolved, "That it is inexpedient to comply with the prayer of the said petitioner."

If the Congress refused to grant the half-pay, or its substitute—

commutation for five years' full pay—to the widow of an officer of the navy, your committee are unable to perceive any reason for extending the half-pay to their children or descendants, after a lapse of sixty years, and especially to officers of private armed vessels, who generally reaped an abundant reward in the profits of the prizes captured by them. They therefore recommend that the prayer of the petition be refused.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 125.

IN THE SENATE OF THE UNITED STATES.

MARCH 18, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 207.]

The Committee on Claims, to whom were referred the memorial and papers in the case of John Hastings, have carefully considered the same, and submit the following report:

The committee have come to the conclusion that the prayer of the petitioner ought to be granted. The case was presented to the last Congress, and referred to the Committee on Claims of the Senate, who made an elaborate report thereon through their chairman, Mr. Broadhead. Your committee think that the principles and rule which ought to govern the action of the government in such cases are very well and properly stated in that report, and they meet the concurrence of this committee. That report is hereto annexed, and we beg leave to refer the Senate to the same, as containing a correct and somewhat detailed statement of the evidence which was before that committee and the Senate at the last session of Congress.

During the discussion of the case in the Senate at the last Congress, a letter from one Robert Hague to the Hon. John P. Hale, was read, which expressed the opinion that the alleged robbery of Mr. Hastings was a sham, and which stated some facts calculated, if true, to cast suspicion upon the truth of that allegation. Your committee deeming it proper to obtain all the information which would throw light upon the subject, placed Mr. Hague's letter in the hands of the Secretary of the Treasury, with the request that he would transmit the same to the United States district attorney at Pittsburg, with instructions to examine Mr. Hague, upon oath, as to the facts stated in that letter, and any other facts which he might be disposed to state bearing upon the subject. The letter was accordingly transmitted to Pittsburg, and Mr. Hague examined under oath. The examination, however, elicited no new fact. Mr. Hague simply verified, in general terms, the truth of the facts stated in his letter. The production of this letter against Mr. Hastings and the recent verification of it by the writer, caused Mr. Hastings to take the depositions of several witnesses, in addition to those originally filed in the case, and which were, shortly after the transaction, taken before the mayor of Pittsburg. These latter depositions fully sus-

tain the testimony previously taken in the case, and, in the opinion of the committee, remove all doubt of the fact that Mr. Hastings was attacked, very badly injured, knocked down, and robbed, on the occasion alluded to, as represented by him. There cannot now be the least doubt that he was thus robbed of the key of the vault where the money was kept, by ruffians and robbers, who immediately proceeded to the custom-house and were let into it by one of the watchmen, who was, probably, one of the three men who made the attack, and unlocked the vault with the stolen key, and abstracted the two bags of gold which were missed. Doubtless they intended, and attempted, to take the emptied bag of gold, but, in the darkness and hurry of the occasion, suffered it to fall upon the floor, and fearing that the sleeping watchman in the front room might awake and detect them, hastily retired, leaving the contents of that bag scattered on the floor of the vault.

This committee have strong reasons to believe that one of the watchmen was a *particeps criminis* in the robbery. Indeed, it is difficult to see how the robbers could have entered the house without the aid of some one having a key of the front room. The testimony taken in this case so completely disproves the suspicions thrown over it by Mr. Hague, that the committee attach no credit or strength to his statement; and believing that it is clearly established by a mass of testimony from witnesses of the highest character, that the facts stated by Mr. Hastings are true, and that he had no complicity whatever in the robbery, are of opinion that he ought to be relieved, and report a bill accordingly.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 126.

IN THE SENATE OF THE UNITED STATES.

MARCH 19, 1858.—Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

[To accompany Bill S. 208.]

The Committee on Naval Affairs, to whom was referred the petition of Fabius Stanley, a lieutenant in the navy of the United States, praying to be allowed the difference between the pay of lieutenant and that of commander during the time he was actually attached to the navy yard at Mare island, California, have had the same under consideration, and report:

The petitioner, a lieutenant in the navy, was detailed on the 22d of November, 1854, by the Navy Department, for duty at the navy yard, Mare island, California, and under this order he performed duty there for about one year, he being the only commissioned officer besides Commander Farragut, commanding the yard. The petitioner's pay was $1,500 per annum. This, as he alleges, was insufficient to support him, and he cites the following as the rates of pay at the yard at the time, to wit: Carpenters, blacksmiths, and masons $8 per day; clerks, $8 20 per day; laborers, $5 50 to $6 50 per day.

Your committee find that, under the act of the 5th August, 1854, the commander of this yard, entitled by his lineal rank to $2,100 per annum, received $3,500 per annum, (the pay of the next highest grade,) in consequence of the enhanced price of all the expenses of living in California; and upon referring to the senators from that State for information as to such expenses at the time of Lieutenant Stanley's service, they state it to have been about fifty per cent. above those in the eastern States—"servants' hire, board, washing, &c., being from fifty to one hundred per cent. higher."

The Secretary of the Navy, on the 18th February, 1857, in response to a letter addressed to him by the committee on this case, says: "My opinion is, that the pay of the officers of the navy yard at San Francisco has not been fairly proportioned to the immense extra expenses to which they have been subjected. I have frequently officially recommended that the pay of the officers at that navy yard should be

greater than that of those at other yards. In the case of Mr. Stanley, I am not aware of any other peculiar claim."

The prayer of the petitioner is for commander's pay in lieu of that he received as lieutenant, and deeming his prayer reasonable your committee report a bill accordingly.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 127.

IN THE SENATE OF THE UNITED STATES.

MARCH 19, 1858.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 209.]

The Committee on Claims, to whom was referred the petition and papers of Joseph C. G. Kennedy, report:

This claim is for indemnity for certain damages done to a building while in the occupancy of the United States, under a lease from the claimant, for the use of the Census Office. By agreement between the proprietor and the Secretary of the Interior, the rent was fixed by John W. Maury, late mayor of Washington, and W. A. Bradley, esq., late postmaster, at $1,750 per annum. The testimony of several witnesses is adduced to show the condition of the building when it was surrendered by the government. Mr. J. S. Hollingshead, for some time chief clerk of the Census Office, deposes that, "In all alterations and fixtures for the accommodation of the immense quantity of matter in the shape of returns, &c., the preservation of the property was not considered, but the walls were perforated with nails for shelving, &c.; the paper, of the most costly character, destroyed, and this once beautiful house (for the interior was very finely finished) was left, so far as the interior was concerned, a perfect wreck." He further says that he does not believe "that less than $2,000 would place the building in as good condition as when the government took possession of it."

John W. Forney, late clerk of the House of Representatives, deposes "that he became the proprietor of the buildings on 8th street, Washington, previously occupied by the Census Office; that the same were, when taken by him, in an untenantable and damaged condition, the walls being much cracked, the papering destroyed, and the woodwork much injured, the whole requiring thorough renovation; that to render the premises tenantable and place them in a condition, such as he deemed necessary for the comfort of his family, he expended over $3,000."

Mr. Edmondson, a practical builder, states that it could not have been restored to the condition it was in before the occupancy, for less than $2,000, and Mr. Wood states it at $1,800, or more, and thinks a rent of two months should be allowed to cover the time of repairs.

The contract between the government and the proprietor, as stated in the letter of the Hon. A. H. H. Stuart, Secretary of the Interior, to the Hon. H. A. Edmonson, stipulates, amongst other things, "that for any injury done to the house, beyond the ordinary wear and tear, compensation shall be made, by restoring it to the condition in which it was at the commencement of the lease."

From all the testimony in the case, the committee are of opinion that the sum of two thousand dollars ought to be allowed, and they report a bill accordingly.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 128.

IN THE SENATE OF THE UNITED STATES.

MARCH 24, 1858.—Ordered to be printed.

Mr. WILSON made the following

REPORT.

[To accompany Bill S. 211.]

The Committee on Military Affairs and the Militia, to whom was referred the memorial of Henry O'Rielly, John J. Speed, and Tal. P. Shaffner, proposing to establish telegraphic communication between the army of Utah and the War Department, by erecting a line from the westerly terminus of the Missouri river line to Utah, have had the same under consideration, and report:

That the memorialists are well known throughout the United States as practical telegraphers, they having erected or devised many lines of telegraph both in this country and Europe; and your committee, therefore, have in their ability full confidence that if the authority of the government is given to them they will perform all they promise.

Your committee fully concur in the statement of the memorialists in their memorial, that—

"The vast importance of telegraphic facilities for communication between the federal government and the civil and military authorities stationed in the interior Territories, *at any time*, is too obvious to require comment; but in connexion with *military movements of warlike character*, we may quote the remark, often repeated by Gov. Marcy, that if telegraphic facilities had existed *southwardly* at the commencement of the Mexican war, the government might have prevented much loss of life and saved half a million of dollars by a *single telegraphic despatch*. Appearances already indicate that similar remark is more or less applicable to the Mormon difficulties. A single fact speaks volumes on this subject; and that fact is, that our intelligence from the *extremities of Europe* is now *four weeks later* than from the American army on the borders of Nebraska and Utah, *near the centre of our own country*."

The Secretary of War, in his annual report at the commencement of the present session, while recommending the immediate opening of two routes between the Atlantic States and Pacific coast, besides the rail route from El Paso to the Colorado, says:

"A line of stockade posts upon two of these routes would not require

a very large force to maintain them, and, if placed at proper distances apart, would furnish certain means of a safe and rapid transportation of the mails and perfect protection *to a telegraphic line from one ocean to the other, which latter object would, in itself, be worth far more to the country than the cost of the posts, and the expense of maintaining them.*"

Secretary Floyd, in reply to a letter addressed to him by your committee, has replied, in a letter dated March 16, 1858, very strongly recommending to the patronage of government the enterprise of the petitioners. The Secretary's letter is hereunto appended, and makes a part of this report.

These opinions of the late Secretary Marcy and the present Secretary of War, Floyd, are entitled to, and have, great weight on the minds of your committee. Indeed, so connected with the operations of war has the telegraph become, that it must be regarded as almost as indispensable to the successful operations of an army as the munitions of war themselves. There can hardly be a doubt that all the expenses of the various telegraph lines to the Crimea, during the war there, were paid tenfold by the facilities they gave for communication between the armies there and their several home governments. Indeed, the doubt has been expressed whether, without the aid of the telegraph, that war could have been successfully carried on by Great Britain and France.

A far grander result may be hoped for and expected from the establishment of the line contemplated by the memorialists in their proposition to Congress; for, although it be initiated as a military measure, it cannot but be evident to all, that, when the necessity for thus using it shall cease, it will remain a portion of that great bond of domestic intercourse, which *must* eventually enable the people on the Atlantic coast to hold hourly converse with their fellow-citizens on the Pacific! Although, *in itself*, but a frail wire, it will become the great chain of union to bind the wide extremities of our federal Union to each other.

The memorialists propose, should their prayer be granted, to connect Washington with the army of Utah *in one hundred days* from the time the ground is broken.

Regarding this as an enterprise of momentous importance and worthy of the patronage of this government, and believing that the money appropriated to carry it into effect will be well and judiciously expended, we report a bill for carrying out the project of the memorialists, and ask its early consideration.

WAR DEPARTMENT,
Washington, March 16, 1858.

SIR: In answer to yours of the 10th instant, transmitting, for the opinion of this department, as to the necessity and propriety of making an appropriation for the completion of the telegraphic lines to Fort Laramie and Salt Lake, as suggested in the memorial of H. O'Rielly and others, I have the honor to state that, the advantage which the government would derive from a line of telegraphic communication, in successful operation to Fort Laramie, and beyond that point, cannot well be over-estimated. Such a line can be laid down at a comparatively small cost, with great expedition, and in such a manner as to secure it, in a great measure, against the danger of any interruption from Indians along the route; and, if once constructed and established, it could, at a moderate cost, be kept up.

Desirable as this enterprise would be at all times, as a means of transmitting intelligence, it rises, under the present state of things, to an importance that can scarcely be over-estimated. I cannot express too strongly my high estimation of its great value to the public service, and recommend it earnestly to the favorable consideration of your honorable committee.

The papers enclosed by you are herewith returned.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

Hon. R. W. JOHNSON,
Chairman pro tem. Committee on Military Affairs, Senate.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 129.

IN THE SENATE OF THE UNITED STATES.

MARCH 24, 1858.—Ordered to be printed.

Mr. SIMMONS made the following

REPORT.

[To accompany Bill S. 212.]

The Committee on Claims, to whom was referred the memorial of Joseph C. G. Kennedy, in relation to his compensation as Superintending Clerk of the Census, report:

This claim was fully examined by the Senate committee of claims of the last Congress, and upon a review of the case this committee concur in the report then made, which is hereto annexed as a part of this report.

IN THE SENATE OF THE UNITED STATES, *January* 20, 1857.

Mr. GEYER made the following report.

[To accompany Bill S. 510.]

The Committee on Claims, to whom was referred the memorial of Joseph C. G. Kennedy, report:

The census board was constituted by act of 3d March, 1849, with the power to appoint a secretary, but without fixing his compensation.—(9 Stat. 402.) Mr. Kennedy was appointed secretary. The 20th section of the act of May 23, 1850, authorized the allowance to the secretary of the census board of a salary of $3,000 per annum "during the period he has been in their employ."—(9 Stat. 432.) The 19th section of the same act provided for the appointment of a superintending clerk of the census, at a salary of $2,500 per annum. This appointment was also conferred upon Mr. Kennedy, and accepted by him. But as the census board was not dissolved, and as he still continued to act as its secretary, he continued to claim the salary of $3,000, which the Comptroller of the Treasury refused to allow, on the ground that the office of secretary of the census board was superseded by that of superintending clerk of the census.

In order to settle the question thus raised, the Secretary of the Interior addressed a communication to the census board, inquiring

whether they regarded their labors as ended and their secretary discharged from his duties; to which the board responded that they did not consider the census board as dissolved, or Mr. Kennedy, its secretary, discharged from duty. This correspondence occurred in September, 1851, and would seem to show that Mr. Kennedy was still performing the duties of secretary of the census board, for at least sixteen months after his entering upon the duties of superintending clerk, and according to usage was entitled to the higher salary applicable to either of the two offices which he filled.

But in consequence of the continued objection of the Comptroller, the Secretary of the Interior in March, 1852, addressed a note to the chairman of the Senate Committee on the Judiciary, suggesting the introduction of a clause into the supplementary census bill, then pending, fixing the salary for the performance of both duties at $3,000.

With a view, it is presumed, of accomplishing the object desired by the Secretary, a clause was introduced into the supplementary bill "that the twentieth section of the said act [of 23d May, 1850] be amended by striking out the words '*has been*' from the last line, and inserting the words '*may necessarily be*' in lieu thereof." It will be perceived that the effect of this amendment was to provide for the payment of the salary of $3,000 to the secretary of the census board *during the time he may necessarily be in their employ, instead of during the time he has been in their employ*, as provided in the original act.

At the commencement of the next session of Congress, it was represented to the chairman of the Judiciary Committee of the Senate that the above amendment of the act of 1850 might enable the memorialist to claim and receive the two salaries of secretary of the census board and of superintending clerk, amounting to $5,500 per annum. This led to the adoption of the joint resolution of 23d December, 1852, which had the effect not only to repeal the above amendment to the act of 1850, but to provide that the act should "be so construed that no allowance as compensation be made to any person for constructive or any other service rendered as secretary to the census board, after the first day of June, 1850."—(10 Stat., 260.)

In reference to this resolution Mr. Downs stated in the Senate, that Mr. Kennedy was "claiming nothing more than the salary of $3,000, to which he is entitled, and to which he was entitled."—(Congressional Globe, vol. 24, part 3, p. 2226.) And Mr. Meade, of Va., in the House of Representatives, said: "As well as I can recollect, there was an error committed, by which the superintendent of the census might, by the strict letter of that bill, draw his pay both as clerk of the census board and superintendent of the census. When the Senate became aware of this mistake, they sent down to us this joint resolution for its correction. It gives the superintendent *the choice of being paid as clerk of the census board or superintendent of the census.*"

The construction given to the joint resolution by the accounting officers of the treasury is, that it limits the compensation of the memorialist, for all the duties performed by him in either or both capacities, to $2,500 per annum from the 1st of June, 1850; and as he had already been paid at the rate of $3,000 per annum, up to the

time of the passage of the joint resolution, (December, 1852,) he has been officially called upon to refund to the treasury the $500 per annum received over that sum. By the act of the 22d of April, 1854, after the memorialist had left the office, the salary was definitely fixed at $3,000 a year.—(10 Stat. 276.)

In view of all the circumstances, the committee are of opinion that the sum ultimately fixed upon as a proper compensation for the duties of the office, namely, $3,000 a year, is a reasonable one, and that the memorialist is fairly and equitably entitled to that rate of compensation; and they report a bill accordingly.

The committee report the accompanying bill and recommend its passage.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 130.

IN SENATE OF THE UNITED STATES.

MARCH 24, 1858.—Ordered to be printed.

Mr. IVERSON submitted the following

REPORT.

The Committee on Claims, to whom was referred the petition of Mary B. Renner, have had the subject under consideration and report:

That this claim is for the amount of twenty per cent. deducted from the aggregate of the original claim, presented to the 15th Congress, which allowed the claim, less the said twenty per cent. on the prices charged for the articles destroyed, and a small sum to cover the expenses of removing the same to and from a place of safety.

It appears that, during the war between the United States and Great Britain, the British forces took possession of Washington city, in August, 1814; that at the time Renner & Heath owned an extensive rope-walk in said city, at which they were manufacturing hemp, cordage, &c., for the United States; that they had a large quantity of materials on hand in their said rope-walk; that, in consequence of the act of the United States—(see Report H. R., No. 420, 15th Cong., 1st sess.)—they were prevented from removing their property to a place of safety, in consequence of which they suffered the loss of the same, it having been set on fire, together with the buildings, and destroyed, by order of the British commander. Shortly after the war, and during the 15th Congress, the parties presented their claim for indemnity. The whole amount of the claim, as then presented, was $24,161, exclusive of the value of the buildings. The same was referred to the Committee of Claims of the House of Representatives, and a report made upon it by Mr. Lewis Williams, from that committee, and a bill passed at that Congress which allowed the amount of the claim for the articles destroyed, deducting the sum of $4,953 40, which latter sum was intended by the committee and Congress to cover the expense of transporting the materials to a place of safety and back, damage done to the same thereby, and over charge in the prices claimed for the articles destroyed. The sum allowed and paid by that bill was $19,813 60.

The claim for the balance of the property destroyed, including the buildings, has been several times, subsequent to 1815, presented to Congress and rejected or failed to pass, until the 32d Congress, when

a bill passed paying for the value of the buildings $5,650, and for 1,750 pounds of twine, which was not included in the original account of property destroyed, and making the sum of $6,744. The whole sum thus allowed to the parties amounts to $26,547 60.

The present claim, as stated above, is for the twenty per cent. deducted by the committee of the 15th Congress, for over charge in price, cost of removal, &c. The same facts and evidence which are now presented were before the committee of the 15th Congress, who reported upon the claim and made the deduction of twenty per cent. aforesaid. This was in 1818, shortly after the transaction, and when it was more fully in the power of the committee to judge of the merits of the case and all the facts and evidence than can be done at this late day. With all the evidence before that committee and that Congress, which is now submitted, the committee considered the prices charged too high and made the deduction. At a subsequent Congress, in 1852, the Committee on Claims of tne Senate made another report on this claim, and whilst the claim for the buildings and the twine was allowed, as before stated, the committee came to the conclusion as to the twenty per cent., that, at that distant day, the former action of Congress on that point ought not to be disturbed. In this conclusion your present committee concur; and as still further time has elapsed since the original decision of Congress on the point, your committee think it would be dangerous to open the case again. The proof produced in the case, both as to the quantity and quality of the materials destroyed, as well as the value thereof, is not of the strongest character, and the vagueness and weakness of the evidence as to the whole claim may well justify the committee in rejecting the present demand. The claimants have already been paid a very large proportion of their losses, as alleged by themselves; and considering that a considerable portion of it, especially for the buildings and the twine, rested upon a very slender foundation, and their payment was a large draft upon the liberality of Congress, your committee cannot agree to any further allowance. They therefore recommend that the petition be rejected.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 131.

IN THE SENATE OF THE UNITED STATES.

MARCH 24, 1858.—Ordered to be printed.

Mr. JOHNSON, of Arkansas, submitted the following

REPORT.

The Committee on Military Affairs and the Militia, to whom was referred the memorial of William F. Russell, having had the same under consideration, report:

It appears that while the memorialist was absent from his home at Fort Capron, Florida, in the month of November, 1853, two houses belonging to him, adjoining the fort, were taken possession of by United States troops by order of their commanding officer, and were so occupied without his knowledge or consent, and without rent until the 15th December of the same year, when they were accidentally destroyed by fire.

The testimony of Lieutenant Dickerson is, that he placed the family of a soldier in the houses, under the impression that they belonged to the United States; that the houses were so occupied when he was removed from the fort; and Major Haskins, who succeeded him in the command, testifies that the houses were burned on the 15th December, 1853, while occupied by the soldier's family. The soldier himself testifies as to the occupancy and cause of burning; and Manuel Navarro, a practical house-joiner, besides corroborating the statements, declares under oath that the houses so burned were worth $1,200; and his statement is vouched for by the subscribing magistrate.

The committee cannot understand how these houses could have been taken possession of and occupied so long without the knowledge and consent of the owner, a resident of the place, and there is no satisfactory proof that the property belonged to the memorialist; they therefore report that his prayer be denied.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 132.

IN THE SENATE OF THE UNITED STATES.

March 24, 1858.—Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

The Committee on Claims, to whom was referred the petition of Robert A. Wainwright, a captain in the ordnance department of the army of the United States, have had the same under consideration, and thereupon report:

The petitioner prays to be reimbursed a sum of money stolen from his possession, in Boston, while he was acting as commandant of the arsenal at Watertown, Massachusetts, and for which he has accounted to the United States. The circumstances attending the loss of the money are detailed by the petitioner as follows:

That on or about the 1st of October, 1855, it having become necessary to draw upon the sub-treasury at Boston for the sum of $1,765 for disbursement at the arsenal, your petitioner directed the said Burke to get the covered carriage, then in use at the arsenal, and drive to his headquarters for the purpose of taking himself and his brother, Samuel A. Wainwright, to Boston to procure said money; that on his arrival in Boston he alighted from the carriage, which was driven by Burke, took with him his travelling bag and went into the custom-house, and received from the sub-treasury department the said sum of $1,765 in gold coin, which he deposited in his said bag, and, having locked it, started upon his return to the carriage, when he met said Burke at the lower steps of the custom-house, who took the bag from his hands and placed it in the front part of the carriage.

That your petitioner and his brother then got into the carriage, rode up State street, and stopped near Washington street, and there got out to attend to some business, leaving said Burke in care of the carriage and money—the money having been placed under the back seat of the carriage, which was a covered one, for safety—with instructions to Burke to be very careful of it; to drive up and stop at an apothecary's shop at the head of School street for some medicine ordered there; then to go to the toll-house on the mill-dam for the arsenal bills, and then to come to the Winthrop House for your petitioner and his brother—the Winthrop House being a near point on their way back to the arsenal at Watertown.

That on the arrival of the carriage at the Winthrop House the said Burke, who was driving it, appeared very much agitated, and reported that the travelling bag containing the money was gone.

He said, by way of accounting for its loss, that he had driven up Washington street into School street to the apothecary's shop, as directed; got out and got the bottle of medicine, and then drove through Beacon street to the toll-house and got the arsenal bills, which the toll-man handed to him without his getting out of the carriage; and that he then turned around and drove through Charles street, by the Common, to Boylston street, and stopped directly opposite the Winthrop House; that he then got out of the carriage, lifted up some coats and a blanket which had been thrown over the travelling bag, and, for the first time, discovered that the bag and the money were gone. He protested that he did not know when, where, or how it was taken; that he left the carriage but once—at the apothecary shop, in a crowded street—and then for not more than three minutes; and that no person came to it, to his knowledge, during his short separation from your petitioner and his brother; and that he could in no way account for the loss. He said that he had been often to Boston by direction of Captain Webber, and had drawn and brought away large sums of money from the sub-treasury to the arsenal, and had been intrusted with money to pay the arsenal bills in Boston and elsewhere, but never before had experienced the loss of any public money.

Affidavit of Patrick C. Burke.

I, Patrick C. Burke, of Watertown, in the county of Middlesex and State of Massachusetts, on the first day of October last, and before, a carriage maker of ordnance, and an enlisted man for nearly ten years past at the United States arsenal, in said Watertown, now under the command of Captain R. A. Wainwright, of said arsenal, on oath, depose and say: That on the first day of October, in the year eighteen hundred and fifty-five, I, by order of Captain Wainwright, got the covered carriage in use at the arsenal, and drove to Captain Wainwright's quarters, when the captain and his brother got in, and I drove them to Boston; stopped on Tremont street, at the head of School street; the captain got out and went into an apothecary's shop; he came back, got into the carriage, and rode down to Congress street, and went into a store; came out, got into the carriage, and I drove him and his brother to the custom-house; the captain there, with his brother, got out; I handed him his travelling bag, and he went into the custom-house; after being there about twenty minutes, the captain came out with his brother; I met him at the lower steps of the custom-house, and took the bag from his hands and placed it in the front part of the carriage; it appeared to be heavy, as if there was money in it; the captain then told me, here is a bill I want you to go and pay at the stable; but said, hold on, I will go, and stay in the carriage while you pay the bill. The captain and his brother then got into the carriage, and I drove them up to State street, and stopped near the old State House; the bag was in the

carriage when I left to go to the stable, and was in the same place when I got back; the captain and his brother got out in State street; Captain Wainwright told me to call up at the apothecary's shop, where he stopped in the morning, and get the bottle he had ordered, and go to the toll-house, on the mill-dam, and get the bill, and meet him at the Winthrop House; he turned round and said, put that bag under the back seat and keep a good lookout for it. I put the bag under the back seat, and put the flap of the seat down, which entirely obscured the bag from sight, with the captain's and his brother's coats, and the blanket, in front of that seat; and the curtains of the carriage being down, and the coats and blanket there, the bag was completely enclosed and out of sight. I then drove up Washington street into School street, to the apothecary's shop, and got out and got the bottle, and drove through Beacon street to the toll-house and got the arsenal bill, which the toll-man handed me without my getting out; I then turned round and drove through Charles street, by the Common, to Boylston street, and stopped opposite the Winthrop House; then got out and lifted the coats and blanket from before the seat for them to get in, and raised the flap of the seat to see if the bag was safe, and found it was gone; when, where, or how it was taken, I do not know. No person came to the carriage to my knowledge, and I left the carriage but once, when I went to the apothecary's shop, and that was for about three minutes. I saw no person near the carriage when I went in or came out of the apothecary's.

I have often been to Boston, by direction of Captain Webber, to the sub-treasury, and taken out money, often in large sums; and also have deposited checks in the sub-treasury, under Capt. Webber, when he had charge of the arsenal, and have been intrusted with money to pay the arsenal bills in Boston and elsewhere, and never before have experienced any loss of public money.

PATRICK C. BURKE.

It is shown, by affidavits, that Captain Wainwright made proper exertion, through the police, to recover the money; and a police officer expresses the belief that it was stolen by two thieves then in Boston.

While sound policy, no less than justice, demands that a disbursing agent of the government should not be held responsible for money lost under circumstances involving no want of care and diligence in its safe keeping, the importance of the trusts necessarily devolved upon them demands that all such agents should, at least, guard, preserve, and watch over the public money committed to them as carefully as if it were their own. Their care and diligence should be those of a prudent owner. Your committee do not think that sufficient care was bestowed upon the money in question.

Burke, to whose custody the petitioner committed it, was his own servant; an honest man, doubtless; but in sending him off alone with the money in the carriage, directing him "to drive up and stop at an apothecary's shop, at the head of School street, for some medicines ordered there; then to go to the toll-house on the mill-dam for

the arsenal bills, and then to come to the Winthrop House," &c., he devolved upon him (Burke) a duty which, as appears from Burke's testimony, rendered it necessary for him to leave the carriage, with the money in it, alone in the street, for about three minutes.

As the case is presented, your committee do not think the petitioner is entitled to the relief prayed.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 133.

IN THE SENATE OF THE UNITED STATES.

MARCH 24, 1858.—Ordered to be printed.

Mr. HAMMOND submitted the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of Martin Hubbard, praying indemnity for the loss of a vessel owned by him, which was run into and sunk by the United States steamer Engineer, Captain Lovell, have had the same under consideration, and ask leave to report as follows:

The facts of the case, as gathered from the statements of Captain Lovell, his pilot, and a seaman, on one side, and Captain Turner and a seaman on the other, are these: On the night of the 6th May, 1856, which was very dark and rainy, the "Engineer" was going down the Chesapeake from Annapolis to Norfolk, when she discovered a light, which was supposed to be Lookout light, and made for it. It was soon ascertained to be the light of another vessel, which proved to be the schooner "Buena Vista," owned by the petitioner, commanded by Captain Turner, and bound for Baltimore. Had Captain Turner pursued his course, or the "Engineer" hers, the collision could not have happened; but when the "Engineer" by mistake stood for the schooner, Captain Turner changed his course, and stood for the steamer, and very soon the two vessels were within hail. Captain Lovell put his helm hard a starboard, to avoid collision, and ordered Captain Turner to port, which order, if executed, would have prevented it. But the mainsail of the schooner was down for reefing, and she had no after sail, and in consequence instead of going about she "forged ahead," and run into the after part of the steamer's starboard wheelhouse, and sunk directly, but not before the men were all taken off by Captain Lovell. The wind was southward and eastward, and the original course of the schooner was N.N.W., with the wind, and that of the steamer S.S.E., against the wind. There is no mention of the rate at which the steamer was running, nor does it appear that any order was given to stop the engine before the collision.

On these facts the petitioner claims indemnity for his losses to the extent of twenty-five hundred dollars, at which his vessel was valued; and the captain three hundred and seven dollars for his losses; and

David Dam, one of the crew, seventy-four dollars and fifteen cents for his.

Had the "Engineer" not made the mistake about the light, and changed her course, there would have been no collision; and perhaps it might have been prevented had the attempt been made to stop the engine when the schooner was hailed. And as the law is well established that steamers must always give way to sailing vessels, the Engineer was clearly responsible for this change of course, though made by mistake, and for not, at least, trying to stop her engine. On the other hand, the schooner was greatly in fault and responsible for changing her course and standing for the steamer for no other alleged reason than that the steamer was standing for her; and, also, for not being in a condition to come to and go about, which would have prevented the collision. Perhaps it was the full belief of Captain Lovell that the schooner could go about, which made him omit to order the engine stopped. It is highly probable that she could have done it had she been under proper canvas.

Under all the circumstances of this case, the testimony on both sides being *ex parte*, and not full as regards details, the committee think that they cannot with justice offer any opinion upon it. It should be investigated by a court of law, in which all the facts could be fully drawn out; and as it has not yet been decided that the United States is bound to pay damages for the carelessness or unskillfulness of persons in public employment, the committee beg leave to be relieved from further consideration of the subject.

35TH CONGRESS, } SENATE. { REP. COM.
31st Session. } { No. 134.

IN THE SENATE OF THE UNITED STATES.

March 25, 1858.—Ordered to be printed.

Mr. IVERSON submitted the following

REPORT.

The Committee on Military Affairs and the Militia, to whom was referred the petition of John Caris and others, having had the same under consideration, report:

The petitioners represent that they were volunteer soldiers, raised in the State of Ohio in May, 1812, under the act of 6th February of that year; that they were received into the service of the United States in July, 1812, under the command of Captain John Campbell; that they were included in the capitulation of General Hull's army, on 16th August, 1812, and were taken prisoners by the British at River Raisin, and were continued as such prisoners, as they state, until about September, 1814. They acknowledge that they were paid for one year's services, but they now claim pay and allowance for another year, viz: from September, 1813, to September, 1814.

The records of the War Department show that Captain John Campbell's company, to which these petitioners belonged, was mustered for one year, and that they were paid for that time, but they do not show that they, or any part of them, were prisoners of war after the time for which they were paid as above, nor do the petitioners present any evidence to sustain their claim.

The committee, therefore, report that the prayer of the petitioners be not granted.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 135.

IN THE SENATE OF THE UNITED STATES.

MARCH 30, 1858.—Ordered to be printed.

Mr. POLK made the following

REPORT.

[To accompany Bill S. 216.]

The Committee on Foreign Relations, to whom was referred the memorial of George M. Weston, the Commissioner of the State of Maine, have had the subject under consideration and now report:

That by the 5th article of treaty of Washington, concluded the 9th day of August, A. D. 1842, between the United of America and her Britannic Majesty, it was covenanted by the United States to pay and satisfy the State of Maine for all claims for expenses incurred by her in protecting the thereupon disputed territory on the northeastern boundary of the United States. That in the year 1839, upon the sudden emergency of the Aroostook war, for the purpose of raising the means of protecting said disputed territory, the State of Maine issued and sold her six per cent. stocks to the amount of about eight hundred thousand dollars, at a discount below their nominal value. Also, that in order to raise additional amounts of cash, she exchanged six per cent. stocks for five per cent. to the holders of such five per cents. Under the act of Congress of the 3d of March, 1851, the United States has paid back to Maine the actual amount of money she realized by such sale and exchange of stocks, and also interest thereon at the rate of six per cent. per annum. Under said act Maine claimed not only the amount so paid to her by the United States, but also the amount of discount and loss, with interest thereon, which she was compelled to incur by the aforesaid sale. On the 10th of April, 1852, the treasury decided to pay as is stated above, refusing the claim for losses in the sale and exchange of her stocks. The agent of Maine at once applied to Congress for further relief, and the Senate decided in her favor, in August, 1852. But having failed to obtain the relief sought, owing to the fact that action by the House was not had on her claim, she now presses her claim before Congress.

Your committee think that the losses so incurred by Maine, in the sale and exchange of her stock, for the purpose of raising money to defend the disputed territory, as aforesaid, together with interest on

the same, is as much a part of the expenses incurred by her, in the sense of the treaty of Washington, as the amount already refunded to her by the United States, and ought, accordingly, to be paid and satisfied to her. They therefore beg leave to report a bill for that purpose.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 136.

IN THE SENATE OF THE UNITED STATES.

MARCH 30, 1858.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany Bill S. 56.]

The Committee on Pensions, to whom was referred Senate bill No. 56, entitled "A bill explanatory of an act entitled 'An act in addition to certain acts granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States,' approved March 3, 1855," have had the same under consideration and beg leave to report:

That for the reasons set forth in the letter of the Commissioner of Pensions, dated March 3, 1858, hereunto appended, they recommend that the bill do not pass.

PENSION OFFICE, *March* 3, 1858.

SIR: I have the honor to return you the bill for a public act entitled "A bill explanatory of an act entitled 'An act in addition to certain acts granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States,' approved March 3, 1855."

The object of such a law would be to extend the grant of bounty land to a class of persons who are not now beneficiaries, and it might be to the exclusion of some who are. For example: under the act of February 11, 1847, providing for the soldiers of the Mexican war, the only persons entitled, in the event of the death of the soldier, are, 1st, his widow and children jointly; 2d, his father; 3d, his mother; and 4th, his brothers and sisters.

Under the act of September 28, 1850, the bounty goes first exclusively to the widow of the soldier, and, in the event of her death, also exclusively to the minor children.

Under the act of March 3, 1855, where the soldier has died, the benefits of the act go first to the widow exclusively, and, in the event of her death or intermarriage, second to those of the children who were minors on the 3d of March, 1855; but if there be no such children, the widow of the soldier is remitted back to her rights upon the death of, or her divorce from, her second husband.

In the absence of any of these expressly constituted beneficiaries,

the right to the bounty is now held to have lapsed to the government; but such a law as this bill proposes to become would wholly exclude the widows, as it seems to me, of all the rights conferred upon them by existing laws, and compel the minor children to share equally with those who had attained to majority.

No difficulty is experienced in securing the rights of parties constituted beneficiaries under existing laws. The general policy of Congress in the passage of the recent bounty land laws seems to have been to protect the helpless dependents upon the soldier, viz: his widow and minor children. Beyond these, I cannot perceive that the government is under any obligation to provide for; but if the bounty provided by the act of 3d March, 1855, is by further legislation to be extended to other than the beneficiaries named therein, it ought, in my opinion, to be limited to the personal representatives named in the act of February 11, 1847, and the acts amendatory thereof, viz: the widow and children of the soldier, his parents and brothers and sisters.

With great respect, I am your obedient servant,

GEORGE C. WHITING,
Commissioner.

Hon. GEORGE W. JONES,
Chairman Committee on Pensions, United States Senate.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 137.

IN THE SENATE OF THE UNITED STATES.

MARCH 30, 1858.—Ordered to be printed.

Mr. CLAY submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of John S. Devlin, late an officer in the marine corps, beg leave to report:

That they have had the same under consideration, and find that the petitioner received a flesh wound in the chin at the storming of Chapultepec, September 16, 1847; was discharged by the surgeon, as fit for duty, in the December following. The character of the wound, as described by the surgeon, does not indicate that any permanent disability would probably result from it, and the testimonials of officers of the navy do not indicate that such has been the result, as they show that Mr. Devlin continued in *active* service up to 1852.

This case is now before the committee for the third time, having been reported upon adversely upon two former occasions, and as no additional testimony has been adduced, going to show disability, as the result of the wound received in the service, the committee recommend that the prayer of the petitioner be denied, and ask to be discharged from the further consideration of the petition.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 138.

IN THE SENATE OF THE UNITED STATES.

MARCH 30, 1858.—Ordered to be printed.

Mr. CLAY submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of William R. Brownlee, have had the same under consideration and beg leave to report:

That the petitioner entered the service of the United States as a soldier in the regular army on the 17th of July, 1812, and was honorably discharged in July, 1817; that he was afterwards engaged in the Indian difficulties upon the frontier; that he is now old, decrepid, and nearly blind, and that he has no means of obtaining a livelihood but from the charities of friends. There is no evidence, however, to show that his present disabilities are the result of wounds received, or disease contracted, while in the line of duty in the service of the United States. The committee are, therefore, of the opinion that the prayer of the petitioner should be denied, and beg leave to be discharged from the further consideration of the case.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 139.

IN THE SENATE OF THE UNITED STATES.

MARCH 30, 1858.—Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of seamen on board the United States steamer Missouri, destroyed by fire at Gibraltar, in 1843, *praying remuneration for the loss of their clothing, lost by the burning of that vessel, have had the same under consideration and thereupon report:*

The attention of Congress was called to the subject of the losses sustained by these meritorious men by the President, in his annual message of the 5th December, 1843, in reporting the loss of the ship, as follows: "It gives me great pain to announce to you the loss of the steamship Missouri, by fire, in the bay of Gibraltar, where she had stopped to renew her supplies of coal, on her voyage to Alexandria, with Mr. Cushing, the American minister to China, on board. There is ground for high commendation of the officers and men for the coolness, and intrepidity, and perfect submission to discipline evinced under the most trying circumstances. Surrounded by a raging fire which the utmost exertions could not subdue, and which threatened momentarily the explosion of her well supplied magazines, the officers exhibited no signs of fear, and the men obeyed every order with alacrity. Nor was she abandoned until the last gleam of hope of saving her had expired. It is well worthy of your consideration, whether the losses sustained by the officers and crew in this unfortunate affair should not be reimbursed to them."

The Missouri's officers and crew upon this occasion, as American seamen ever do, performed their duty. They have received every dollar to which they were equitably entitled under their contract with the government. The petition of the officers to be reimbursed for losses of clothing, &c., has heretofore been denied by Congress. The present petition is by seamen and forward officers. It is not founded upon any legal or equitable right arising out of their contract, but is addressed solely to the liberality of the government. The expediency of making such allowances in such cases must be regarded as very questionable, and particularly so when, as in the case before us,

fifteen years have elapsed since the losses were sustained, and it must be quite uncertain whether the parties concerned would derive much benefit from them.

Your committee feel constrained to report adversely to the prayer of the petitioners, and to ask to be discharged from its further consideration.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 140.

IN THE SENATE OF THE UNITED STATES.

MARCH 30, 1858.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany Bill S. 23.]

The Committee on Pensions, to whom was referred Senate bill No. 23, for the relief Robert Dickson, together with other papers, ask leave to submit the following report:

That Robert Dickson now receives a pension on account of disability arising from "inguinal hernia on the right side," occasioned by a fall at Monterey, in Mexico, whilst in the performance of duty as a soldier of the United States. The eight dollars per month now received by Mr. Dickson is believed to be the highest sum granted to soldiers under similar circumstances. There is no evidence before the committee going to show that this is a case meriting greater reward from government than others of the same class, and it is therefore recommended that the bill do not pass.

5TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 141.

IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1858.—Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of W. W. Bassett, late master in the United States navy, praying to be allowed the difference of pay between the grades of master and lieutenant during the time he acted as lieutenant, have had the same under consideration, and report:

This case does not differ from that of Lieutenants Carter, Bennett, and Lowry, (reported on this day;) and, for the reasons therein stated, your committee report adversely to the prayer of the petitioner.

35TH CONGRESS, } SENATE. { REP. COM.
1st Session. } { No. 142.

IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1858.—Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of J. H. Carter, for himself, J. W. Bennett, and R. B. Lowry, lieutenants in the navy, praying to be allowed the difference of pay between the grades of master and lieutenant, during the time they served as acting lieutenants in the East India squadron, have had the same under consideration, and report:

The third section of the act of June 17, 1844, repeals so much of the acts of 1835 and 1842 "as provides that officers temporarily performing the duties belonging to those of a higher grade shall receive the compensation allowed to such higher grade while actually so employed." The act of August 10, 1846, makes an exception in favor of passed midshipmen "performing the duties of master, under the authority of the Secretary of the Navy," and provides that they shall "receive the pay allowed to such higher grade while actually so employed"—an exception established, in the opinion of your committee, in consequence of the peculiarly responsible duties of masters as navigators of our ships-of-war.

Your committee can see no sufficient claim on the part of the petitioners, in the temporary performance of the duty of a higher grade, in the regular line of the naval service, under the detail of the commander-in-chief of a squadron, to require that exception should be made in their favor from the provisions of the act of 1844; but, on the contrary, they do perceive that the granting their prayer would open the doors of Congress to innumerable applications of equal merit. Officers commissioned as lieutenants, under the appointment of the President, by and with the advice and consent of the Senate, now on duty in our foreign squadrons, are receiving at the rate of $1,050 per annum only, and bearing all the expenses of their grade, in outfit and uniform, while your petitioners, for service of one year as "acting lieutenants," ask to be allowed at the rate of $1,500 per annum.

Your committee, therefore, under the general rule of action adopted by them, and mentioned in a previous report, to wit: "the policy of refusing to grant to the officers of the navy any higher compensation than that allowed to them by law," feel constrained to report adversely to the prayer of the petitioners.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 143.

IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1858.—Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of William Reynolds, praying to be allowed the amount of the value of one hundred pairs of stockings, which were stolen from the storeship Fredonia, while he was acting purser and storekeeper aboard the same, have had the same under consideration, and report:

That they do not conceive the petitioner entitled to relief by Congress, and therefore recommend that the committee be discharged and the prayer of the petitioner rejected.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 144.

IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1858.—Ordered to be printed.

Mr. POLK submitted the following

REPORT.

The Committee on Claims, having had under consideration the claim of Seth Belknap, beg leave to report:

That in the year 1819 Nimrod Farren and Richard Harris entered into contract with the United States for the erection of a fortification on Dauphine island, in Mobile bay, and Seth Belknap became a subcontracter under them in doing that work, and, as such, they became his debtors to a large amount, and on the 20th December, 1823, executed to him their note, at thirty days, for $17,642 64.

The erection of the fortification was ultimately abandoned, and on the 3d of March, 1825, Congress passed a law for the relief of said Farrow and Harris, which required the Secretary of War to cause to be delivered up and returned to said Farrow all sureties or liens held by the United States on his property, and to pay to said Farrow, or his legal representatives, $73,747 76, provided that, before he should receive the same, he should enter into bond to the Secretary in the sum of $120,000, with good and sufficient securities, conditioned that said Farrow should appropriate the net proceeds of the personal property and the money so to be received from the treasury towards the payment of the debts contracted by Farrow and Harris for supplies furnished and services rendered in and about the erection of said fortification; and if there should be any surplus after paying said debts, said Farrow shall pay to the said Harris, or his legal representatives, his just proportion of said surplus. This law also provided that it should be the duty of the Secretary of War, on application of any of the parties interested, and upon satisfactory proof of the failure of said Farrow to fulfil the condition of the said bond, to prosecute the sureties therein for the benefit of such.

The petition alleges, in substance, that said Belknap, by his attorney, Joseph Watson, demanded that the Secretary of War should institute suit for his benefit on said bond, which he failed to do.

This allegation of the petition is the material one to sustain the claim of the petitioner; indeed, it is indispensable, for without its being established there can be no just or equitable claim for the relief sought.

After a careful examination of the case before them, the committee find that there is no sufficient proof that a demand was ever made upon the Secretary of War by Seth Belknap, or any person or persons for him, to prosecute said bond for his benefit; nor was any proof ever made to him of the failure of said Farrow to fulfil the condition of said bond, or even that said Belknap was a creditor of said Farrow.

Your committee, therefore, think that the prayer of the petitioner in this case ought not to be granted.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 145.

IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1858.—Ordered to be printed.

Mr. FOOT made the following

REPORT.

[To accompany Bill S. 223.]

The Committee on Foreign Relations, to whom was referred the petition of Frances Ann Macauley, widow of Daniel S. Macauley, late United States consul general at Alexandria, in Egypt, praying compensation for judicial duties performed by her husband under the act of August 11, 1848, *have had the same under consideration, and now report:*

It appears from the petition that the late Daniel S. Macauley was, on the 14th day of August, 1848, appointed consul general of the United States at Alexandria, in Egypt, a port belonging to and within the territorial limits of the Turkish empire; that he continued to hold that office and perform its duties up to the time of his death, on the 26th of October, 1852; that, as consul general of the United States at that port, certain judicial duties were devolved upon him by the act of Congress entitled "An act to carry into effect certain provisions in the treaties between the United States and China and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries," approved August 11, 1848.

In reply to a letter of inquiry, addressed to him by the committee, the Secretary of State, under date of February 2, 1858, says: "That Mr. Macauley was consul during the period claimed, and that he performed judicial services in that capacity there is no doubt; but whether any services of that kind entitled the minister or consuls of the United States in the Turkish dominions to extra compensation, has always been deemed questionable by this department, which has never sent to Congress an estimate for such compensation."

The performance of the services by Mr. Macauley, and for the time claimed, is thus clearly established by the letter of the Secretary of State. The only question, therefore, remaining to be considered is, whether, under the act aforesaid of the 11th of August, 1848, he is entitled to the compensation asked for.

After prescribing the nature and character of the duties to be performed by the commissioner and consuls of the United States in China,

the 18th section of the act provides: "That, in consideration of the duties herein imposed upon the commissioner, there shall be paid to him, out of the treasury of the United States, annually, the sum of one thousand dollars, in addition to his salary; and there shall also be paid, annually, to each of said consuls, for a like reason, the sum of one thousand dollars, in addition to consular fees."

By the 22d section it is further provided: "That the provisions of this act, so far as the same relate to crimes committed by citizens of the United States, shall extend to Turkey, under the treaty with the Sublime Porte of May seventh, eighteen hundred and thirty, and shall be executed in the dominions of the Sublime Porte, in conformity with the provisions of said treaty, by the minister of the United States and the consuls appointed by the United States to reside therein, who are hereby ex-officio vested with the powers herein contained, for the purposes above expressed, so far as regards the punishment of crime."

By the 24th section it is further provided: "That all such officers shall be responsible for their conduct to the United States and to the laws thereof, not only as diplomatic functionaries and commercial functionaries, but as judicial officers when they perform judicial duties, and shall be held liable for all negligences and misconduct as public officers."

From these several provisions of the act under consideration, it is evident that the same class of duties and responsibilities are alike devolved upon the diplomatic and consular agents of both countries; and, in the opinion of the committee, it would seem to be but reasonable to suppose that Congress intended to allow the same measure of compensation to each. To determine otherwise would establish an unjust discrimination between public functionaries performing the same duties and incurring the same responsibilities.

For these reasons, the committee are of opinion that the claimant is entitled to the relief asked for, and report a bill accordingly.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 146.

IN THE SENATE OF THE UNITED STATES.

MARCH 31, 1858.—Ordered to be printed.

Mr. WILSON made the following

REPORT.

[To accompany Bill S. 224.]

The Committee on Military Affairs and the Militia, to whom were referred papers in relation to the claim of Edward Ingersoll, having had the same under consideration, report:

Under the act making appropriations for the army, approved 3d March, 1853, a board of commissioners was appointed to examine the United States armories. While in the discharge of their duties at Springfield, in Massachusetts, Edward Ingersoll, the military storekeeper at that place, employed carriages for the use and convenience of the board, the expense of which, it was supposed, would be charged to their contingent account, which, including this item, was audited and passed by the board during their session. The appropriation to defray the expenses of this commission was not sufficient to cover them all, as the item of hack hire was stricken out of the estimate before it was sent to Congress, for the reason that it should be paid by the commissioners themselves.

Application was then made to the commissioners for the payment of the amount thus due, and for which Mr. Ingersoll was held responsible; but they failed to attend to it, and Mr. Ingersoll has been compelled, by course of law, to pay the judgment and costs against him, amounting to $335 75.

The committee are of the opinion that the commissioners should have paid this money; Mr. Ingersoll's agency in the matter only extended to making a bargain in order to obtain the use of carriages for the commissioners, at a reasonable price; but as the payment has fallen upon him, it is only fair that he should be reimbursed in the amount for which he was held accountable, and they report a bill for his relief.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 147.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1858.—Ordered to be printed.

Mr. IVERSON submitted the following

REPORT.

The Committee on Claims, to whom was referred the petition of the heirs of Jabez B. Rooker, report:

Mr. Rooker appears to have been employed as clerk in the office of the Commissioner of Public Buildings from 1836 to 1850. Prior to March, 1843, he appears to have been paid for his services out of such funds as the Commissioner had within his control, and at such rate as the Commissioner deemed proper, being no law recognizing the service or fixing the compensation. The rate allowed varied from $900 to $1,250 per annum. In 1843 Congress passed "an act to fix the compensation of the Commissioner of Public Buildings," the second section of which prescribes "that no portion of the appropriation for public buildings and grounds, or any improvement or alteration of the same, shall be applied to the payment of a clerk or clerks in the office of said Commissioner, or of an architect, unless the same be expressly provided for in the act."—(5 Stat., 610.)

Mr. Rooker still remained in the office, and in the discharge of the duties of clerk, as appears from the statement of Commissioner French and others, until the beginning of 1851, although no appropriation was made for his compensation, and although Congress had expressly prohibited the Commissioner from paying for such services out of the public moneys committed to his charge.

In 1852 Congress allowed the Commissioner a clerk, at $1,000 per annum.

At the last Congress the heirs of Mr. Rooker petitioned for the allowance of his salary for the period above stated, from 1843 to 1851, at the rate of $1,250 per annum, and an act was passed, upon the recommendation of the Committee on Claims, directing the accounting officers of the Treasury to settle the claim, and to allow at the rate of $900 per annum for time he was actually employed, deducting all sums paid to him for his services during the said period. In the execution of this act the accounting officers appear to have allowed the salary for the full period claimed, but deducted the sum of $929 50,

($622 for money paid Mr. Rooker by the Commissioner out of his private funds, and $307 50 which he received as supernumerary police officer at the Capitol.)

The petitioners now ask the allowance of the sum so deducted, and an additional allowance of $350 per annum. Upon a revision of the case, this committee is of opinion that the sums above named were properly deducted, and that the rate of compensation allowed was, under all the circumstances, a liberal one; and in accordance with these views the following resolution is submitted:

Resolved, That the prayer of the petitioners ought not to be granted.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 148.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1858.—Ordered to be printed.

Mr. IVERSON submitted the following

REPORT.

The Committe on Claims, to whom was referred the petition of Ann Mathieson, report:

This claim is based upon the following state of facts, as alleged by the petitioner, whose statement is corroborated by the evidence.

Robert Mathieson, the husband of the petitioner, in the fall of 1856, went from Delaware county, Iowa, to Spirit Lake, in Dickinson county, for the purpose of entering upon and securing a "claim" to a half section of public land, with the purpose of making it the future home of his family. He selected his "claim" and commenced his improvements upon it, and continued them until he was interrupted by the snow. He passed the winter at a neighboring settlement until the 12th of March, when he and the settlers with whom he resided were all massacred by a party of hostile Indians, and their property destroyed or carried off. It is in evidence that the property of Mr. Mathieson was valued at about nine hundred dollars. The settlers at Spirit Lake are protecting the "claim" of Mr. Mathieson "at Ocaboga Lake" for the benefit of his widow and children.

Mrs. Mathieson asks that the "claim" may be granted to her children, and that the value of the property destroyed may be paid "to her and them."

So far as the claim for remuneration for property destroyed is concerned, the committee are not aware of any principle heretofore recognized by Congress which would justify its allowance from the public treasury; they, therefore, recommend that it be rejected.

The committee ask to be discharged from the further consideration of so much of the petition as relates to the grant of land, and that it be referred to the Committee on Public Lands.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 149.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1858.—Ordered to be printed.

Mr. BROWN made the following

REPORT.

[To accompany Bill S. 232.]

The Committee on the District of Columbia, to whom was referred a resolution of the Senate, instructing them "to inquire into the expediency of providing by law for the establishment, under the authority and control of the government of the United States, of an efficient police in the city of Washington," have carefully considered the subject and report:

That the police of the city consists of twenty-seven day police officers, and one chief; and of an auxiliary guard of thirty men, and one captain, who is to act as high policeman. The day police is appointed by the mayor, with the consent of the city councils, and is paid out of the city treasury; the cost being $18,000 per annum. The auxiliary guard is appointed by the mayor, under an act of Congress, and is paid out of the national treasury; the cost being $19,000 per annum, and $400 for contingencies.

The police force is both feeble and inefficient. Riot and bloodshed are of daily occurrence. Innocent and unoffending persons are shot, stabbed, and otherwise shamefully maltreated, and not unfrequently the offender is not even arrested. It is hardly necessary to add, that such acts are a disgrace to civilized society, and if not put down must result in disastrous consequences to society, and bring a lasting reproach upon this federal city.

It is the duty of the local authorities to keep order; but they either cannot or will not do it. The obligation is thus thrown upon Congress to take the matter in hand. Congress cannot throw off the responsibility of taking care of the public property, and of defending the persons and property of ministers accredited to this government by foreign powers; and senators and representatives may very well assume that when riot, bloodshed, burglary, and arson, are of almost nightly occurrence, they and their families are not free from danger.

The feebleness of the police is shown by a single glance at its numbers. Fifty-seven men cannot, when the spirit of disorder is rife as it now is, keep order in a city like Washington. The city has in

round numbers a population of 60,000 souls; but it covers an area larger than Baltimore, with a population of 260,000. Baltimore has a police force of four hundred, and Washington has only fifty-seven.

The inefficiency of the police grows out of a number of causes. First and foremost is its feebleness; next, the want of proper responsibility. A police appointed by one power, and paid by another, is very likely to be inefficient. But that which, perhaps, imparts its greatest inefficiency is the fact that it is composed, to a great degree, of active political partizans; and being appointed by the local authorities alone, its efficiency in carrying elections is looked to with as much, or more anxiety, than its efficiency in keeping down disorder.

Without elaborating the subject, your committee have felt justified, from the state of facts now existing, in assuming that the obligation is upon the government to provide a more efficient police for the city of Washington, and therefore report a bill.

SENATE COMMITTEE D. C. ROOM, *March* 3, 1858.

DEAR SIR: The following resolution has been referred, by order of the Senate, to the Committee on the District of Columbia:

Resolved, That the Committee on the District of Columbia be instructed to inquire into the expediency of providing by law for the establishment, under the authority and control of the government of the United States, of an efficient police in the city of Washington.

To enable the committee to act intelligibly, I am instructed to address to you the following inquiries:

First. What is the present police force in the city of Washington, and by whom is it appointed?

Second. What is the annual cost of the police, and by whom is it paid?

Third. What suggestions, if any, have you to make looking to an increased efficiency in the police?

Fourth. Has the police been inefficient? and if so, state the reasons why, and suggest a remedy.

I am further directed to call upon you for a copy of your police rules or regulations, to be laid before the committee, and, if they think it proper, to be submitted by them to the Senate.

Very respectfully, your obedient servant,

MAYOR'S OFFICE,
Washington, March 17, 1858.

SIR: In reply to the several questions submitted to me in a communication received from the committee over which you preside, to the first I respectfully answer, that the police of the city of Washington now consists of twenty-seven day police officers and one chief of

police; of thirty members of an auxiliary guard and one captain thereof, who act as night policemen, and are liable to do day duty whenever any emergency may occur; that during the last year it has been found necessary to appoint, temporarily, twenty-five night police officers in aid of the guard, and that the day police has been permanently increased to nearly double its previous number; that all the police are appointed by the mayor—those of the day police by and with the advice and consent of the board of aldermen.

The annual cost of the day police is eighteen thousand three hundred and seventy dollars, and some contingencies, which expense is paid by the city of Washington. The corporation has already paid during the current year three thousand dollars for special police service.

The auxiliary guard are paid by the government of the United States, each receiving six hundred dollars per annum, and the captain one thousand dollars; making in all nineteen thousand dollars, and four hundred dollars for contingencies.

I suggest that the night police (auxiliary guard) is much too small. The greatest length of the city on an east and west line is 4.572 miles, and on a north and south line is 3.779 miles. It has many crooked and narrow alleys in it, which serve as hiding and lurking places for evil-disposed and disorderly persons. None of these alleys are lighted at night, and but few of the streets and avenues. It would, therefore, take at least one hundred men to effectually watch the city at night and to meet any emergency that is likely to occur, and they ought to have one captain and not less than four lieutenants. The day police, for the present, is large enough.

The police is not inefficient; but, on the contrary, is, and has been, as efficient as it is possible for so small a body of men to be. They have made a very large number of arrests, many of them under circumstances of great danger. They are all strong, able-bodied men of tried courage, and a large proportion of them have received painful, and in some instances, dangerous wounds in the discharge of their duty, and have captured an almost incredible number of fire-arms and other offensive weapons; the return this day alone being four six-shooting revolvers of various patents, one single barrel pistol, besides other more silent but hardly less deadly weapons.

There is a spirit of lawlessness prevading the whole land. Deeds of violence and bloodshed are perpetrated even in villages and hamlets, and all the cities of the country are suffering to a greater extent than ever heretofore from the prevalence of this spirit in their midst.

The county constables, who are appointed by the circuit court, hold their office for an indefinite term, and are held to no responsibility for any omissions to enforce law or punish its violations; and as a recent law of Congress takes from them all fees and emoluments for services rendered in this behalf, they generally avoid them; I therefore suggest that the tenure of their office be well defined by law, that the term be limited, and that they be made responsible to the marshal of the United States for the District of Columbia, and required to obey his orders and those of his deputies, in the suppression of riots and the maintenance of the public peace; and also that some method of com-

pensating them may be adopted, either by returning to the old fee system, or such other as Congress in its wisdom may devise.

The District of Columbia has now to rely on the city police for the discharge of duties which, in the States, belong to the sheriff of the county or the officer representing him—a condition of things which ought not to exist, and which will be, at least, partially remedied by carrying out the above suggestions in relation to the marshal and the county constables.

Very respectfully,

W. B. MAGRUDER, *Mayor.*

Hon. A. G. BROWN,
Chairman of the Senate Committee on the District of Columbia.

OFFICE OF THE CHIEF OF POLICE,
Washington, March 5, 1858.

SIR: I have the honor to acknowledge the receipt of a communication, by order of the Senate Committee on the District of Columbia, making certain inquiries in relation to the police organization of this city, and briefly reply:

In answer to your first inquiry: "What is the present police force in the city of Washington, and by whom is it appointed?" I respectfully reply:

The present force of the police of this city consists of twenty-seven persons, with a chief or captain of police, the members of which are nominated by the mayor to the board of aldermen for confirmation, in the same manner as all the other officers of the corporation. Previous to the 7th of January last, (1858,) the entire police force of the city numbered seventeen, at which date the two boards of the city council passed an act "to organize a police system for the city of Washington, and to reduce the several acts in relation thereto into one," which act increased the force from sixteen to the present number—twenty-seven persons.

The second inquiry: "What is the annual cost of the police, and by whom is it paid?" is answered:

Twenty-seven men, at $630 per annum each.....	$17,010 00
Pay of chief.....	1,000 00
	18,010 00

Which salaries are paid monthly by the corporation.

In addition to the corporation police, there are thirty-one persons attached to the night-guard; which organization, by law, are auxiliary to the police established by the corporation. Their head is called "Captain Auxiliary Guard." They are paid by the government. The contingent expenses of the several guard-houses are defrayed by the corporation. Their duties are confined exclusively to night service in patrolling the city—at the present time, from 8 p. m. until morning.

There are, in addition to the above, a number of officers called "*county constables*," who are entirely inefficient, for the reason that they never act except there is an almost certain prospect of pecuniary reward for their services, and are, therefore, entirely useless.

The suggestions I have to offer, looking to an increased efficiency of the police, are, hurriedly:

1st. A greatly augmented force.

2d. A marshal or head of police, with an adequate number of captains or lieutenants of police, who shall be assigned to duty, generally, in a particular locality or district; who shall be directly responsible for the proper discharge of the duties of the men apportioned to the district in which such captains, &c., respectively shall be assigned.

3d. A sufficient number of station-houses for the accommodation of the men, which will serve as headquarters in the several districts, at which a sufficient force will always be found, at all hours of the day or night, for the protection of public and private property, &c., &c.

4th. Stringent rules for the government of the body, without which any police organization must necessarily be inefficient.

I have hastily thrown together the above suggestions as a kind of basis by which to form a starting point, and upon which to enlarge.

I enclose "Rules and Regulations for Government of Auxiliary Guard," and also a copy of Police Act.

Very respectfully, &c.,

F. A. KLOPFER,
Chief of Police.

Hon. A. G. BROWN,
Chairman, &c., &c., U. S. Senate.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 150.

IN THE SENATE OF THE UNITED STATES.

APRIL 5, 1858.—Ordered to be printed.

Mr. KENNEDY made the following

REPORT.

[To accompany Act H. R. 212.]

The Committee on Private Land Claims, to whom was referred "An act for the relief of N. C. Weems, of Louisiana, (H. R. No. 212,) have had the same under consideration and submit the following report:

That the statement of facts in the report of the House Committee of Private Land Claims upon the memorial of N. C. Weems have been found, upon examination, to be entirely correct, and your committee concurring in the opinion expressed in the above named report, "that no claim more just could be presented for the intervention of Congress," accordingly recommend the passage by the Senate of the act entitled "An act for the relief of N. C. Weems, of Louisiana."

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 151.

IN THE SENATE OF THE UNITED STATES.

APRIL 5, 1858.—Ordered to be printed.

Mr. YULEE made the following

REPORT.

[To accompany Bill S. 237.]

The Committee on the Post Office and Post Roads, to whom was referred the memorial of Arnold Harris and Samuel F. Butterworth, respectfully report:

That the petitioners ask relief from a penalty they have incurred as sureties of William G. Kendall, lately a deputy postmaster at New Orleans. The memorial is as follows:

MEMORIAL.

To the Senate and House of Representatives of the United States in Congress assembled.

The memorial of Arnold Harris and Samuel F Butterworth respectfully showeth:

That on the 14th of April, A. D. 1853, they signed the official bond of William G. Kendall, late postmaster of New Orleans, as his sureties in the penal sum of sixty thousand dollars. On the 7th May, 1855, Kendall was dismissed from the office of postmaster at New Orleans; was arrested, charged with having robbed the mails; was indicted, tried, and acquitted. After his arrest, and before his trial, his account was stated by the Post Office Department, showing a balance against him, as postmaster at New Orleans, of $10,839 19. This account was presented to Kendall; he failed to pay any part of it. Early in January, 1856, your memorialists were called upon by the Post Office Department to pay up this sum of $10,839 19, as sureties for Kendall; on the 7th January, 1856, your memorialist, S. F. Butterworth, deposited with the United States assistant treasurer at New York the sum of $5,000 to the credit of this account; on the 19th of January, 1856, he deposited, in like manner, the further sum of $1,950. And on the 21st January, 1856, your memorialist, Arnold Harris, deposited with the Auditor of the Post Office Department at Washington the sum of $3,889 19, being the balance claimed by said account to be due from Kendall, as postmaster at New Orleans, to the United States. Soon after this, Kendall was tried by a jury at New

Orleans, and acquitted. He immediately left the United States and went to Mexico, where he now resides. After he had thus left the United States, on the 18th day of September, 1856, your memorialist, Samuel F. Butterworth, received a letter from the Auditor of the Post Office Department, (see copy annexed,) informing him that in making out the account against Kendall an error had been made, and that there was still due the department, from Kendall, the sum of $5,365 47.

When the account was first stated by the department, showing a balance against Kendall of $10,839 19, he (Kendall) insisted that there was no such amount due from him, and that the claim was made merely to present him as a defaulter, and thus prejudice his case before the jury. Your memorialists, not doubting his statements, and certain of his innocence, paid the claim without investigation as soon as it was presented to them, and they did this to insure Kendall a fair trial, and because they knew that all of his available means were required by him to prepare for his defence; but your memorialists distinctly state that if the department had at first claimed a balance of $16,204 66 as due from Kendall, they certainly would not have paid that large sum without investigation and legal resistance, unless first indemnified by Kendall or his relatives.

By direction of the government suit was instituted against Kendall (whose last known place of residence was in Missouri) and your memorialists in the United States circuit court of Missouri to recover this last claimed balance of $5,365 47; process was served at the late residence of Kendall; your memorialists appeared by attorney, and suffered judgment to be obtained against them by default.

The only explanation, or rather excuse, given by the Post Office Department for the "grave error" in rendering the first account against Kendall for a sum of $5,365 47 less than was really due the government, was the fact that the clerk who made out the account was intemperate!

Your memorialists ask the Congress of the United States to release them from the payment of the judgment rendered against them as above stated, and they assign as a sufficient reason for such request the fact that, by the action of an intemperate clerk in the Post Office Department, (since dismissed,) they have been deprived of all remedy against Kendall, who had departed from the country before the last claim of $5,365 47 was made known to either of your memorialists.

A further fact your memorialists present: Kendall, charged with a high crime, was vigorously prosecuted; extraordinary means were used to procure his conviction; the United States district attorney at New Orleans was not deemed equal to the occasion; other distinguished counsel was employed, who boasted that he was to receive a fee of $5,000 from the government in the event of Kendall's conviction. To meet this unjust persecution and monstrous proceeding, on the part of the United States, Kendall was compelled to expend large sums of money to retain the services of Senator Benjamin and other eminent lawyers; to procure the attendance of important witnesses; and to conduct his defence to a successful issue, more than his life,

his honor, and his liberty were involved in the contest, not a particle of proof of guilt was produced, he was acquitted.

The moneys thus expended by Kendall, but for the action of the government, would have constituted a means of paying any real balances due from him as postmaster. By the oppressive action of the government he was deprived of these means. Under these circumstances your memorialists submit that his sureties ought not to be called on to make good the moneys thus expended.

The above facts considered, your memorialists ask such relief as the Congress of the United States may deem just and proper.

S. F. BUTTERWORTH,
ARNOLD HARRIS.

Subsequently a letter from one of the petitioners, in reply to an inquiry from the committee was submitted, which is as follows:

NEW YORK, *March* 20, 1858.

DEAR SIR: A memorial from Arnold Harris and myself, as sureties of William G. Kendall, late postmaster at New Orleans, has been referred to the Committee on Post Offices and Post Roads, of which you are chairman. We omitted to state in that memorial anything in relation to the capacity of Mr. Kendall, at the time of his acquittal, to pay or secure the amount claimed as due the Post Office Department from him. It may be said that unless we can show that Mr. Kendall could have been forced to pay, we lost nothing by his departure from the country. The fact is, that Mr. Kendall possessed a valuable property at Biloxi, Mississippi, (represented to be worth over $12,000,) which property he settled upon his wife before he left the country, and proceedings are now pending in the United States circuit court, in behalf of the United States, to set aside this settlement, and to subject this property to the satisfaction of the judgment rendered against Kendall. Had we have known of the existence of this large claim against us, as sureties of Kendall, before his departure from the country, we certainly could, by the application of the sub-treasury law, have compelled Mr. Kendall to apply this property to the payment of this claim, instead of settling it on his wife. There can be no doubt of this. Mr. Kendall would have exhausted his own property not only, but also that of his relatives, rather than have suffered the penalties of the law as a defaulter.

I am, with great respect, your obedient servant,

SAM. F. BUTTERWORTH.

The facts alleged by the memorialists are sustained upon inquiry.

The parties appeal to the equity of the government to protect them from a loss caused by the laches of one of its officers.

When these parties became sureties, they reasonably looked with reliance upon the guards which the laws created against default of its officials for their protection. They had a right to expect correct

and accurate accounts to be kept by the government, quarterly settlements, and such prompt resort to the vigorous and sufficient means of enforcing payment of balances as the sub-treasury law provided. They had a right also to expect early and accurate notice of any default, that they might employ the usual means of securing themselves from damages.

It appears that through the fault of the government, no matter from what cause, they were deceived as to the amount due to the government by Mr. Kendall, and were not apprised of a different state of the account, and of a further balance claimed, until the principal had disposed of his property and left the jurisdiction of the United States. If the government had used the proper care and diligence his departure would have been prevented, and in all reasonable probability the amount recovered. The government was the custodian of the accounts, it alone could know the true state of indebtedness, the sureties could only know through the government. When, upon being informed by the government of the balance owing, they generously came forward and paid the amount from their own private means, they had a right to regard their obligation as discharged, and to discharge their minds from any further vigilance in the transactions of Mr. Kendall. Thus, by the default of the government, they have suffered a damage, and although the case is not one which would secure them immunity in a court of law, yet it presents a fair case for the clemency and consideration of the government.

The committee think that the government may properly relax its strict legal claim, and in consideration of the large amount already voluntarily paid by these sureties, and the injury caused to them by the laches of its own officers, release them from further liability. They accordingly report a bill for the relief of the petitioners.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 152.

IN THE SENATE OF THE UNITED STATES.

APRIL 5, 1858.—Ordered to be printed.

Mr. EVANS submitted the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of Lucretia Bell, heir of Jane Van Deen, widow of Abram Van Buskirk, praying a pension, having had the same under consideration, beg leave to submit the following report:

The petitioner in this case states that she is the child and only heir of Abram Van Buskirk, who was a soldier in the war of the revolution. That the said Abram died in the year 1805, leaving a widow, Jane, who survived him, and died on the 3d of January, 1838; also, that she applied in her lifetime to the Commissioner of Pensions, but died before the completion of the evidence, as stated in the petition; but this does not appear, from the papers received from the Pension Office, to have been done. The only application made to the Commissioner of Pensions seemed to have been by Thomas Van Buskirk, in the year 1851—the son, as he alleges, of the said Abram Van Buskirk, and with his sister, Lucretia, the heirs of his father, the said Abram. The prayer of the petitioner is, that she may be allowed the pension to which her mother would have been entitled under the act of the 4th of July, 1836.

The widow of the deceased soldier died before the passage of the act of July 7, 1838. If she was entitled at all, it must have been under the act of the 4th of July, 1836, which gives a pension to the widows of all soldiers who, if living, would be entitled to a pension under the act of June 7, 1832, who were married before the termination of the last period of the service of the husband. To establish a right to a pension under this act, two things are necessary: 1st. That the husband served six months, at least; and 2d. That the marriage took place during the service. There is, perhaps, satisfactory proof that the marriage took place on the 29th of November, 1778; of the service, the evidence is not satisfactory. There is no evidence of any service, except the affidavits of two very old men, who say that he was pressed into the service in 1776 and 1777, and served during these years, and in 1778—two years and nine months in all; but whether he served after his marriage is entirely uncertain. For this deficiency

of proof, the Commissioner of Pensions refused the application. At the date of this rejection, under some former interpretation of the pension laws, it was held, that if a widow who was entitled died without receiving the pension to which she was entitled, her children could receive it upon establishing her claim. Under this decision, the children of Mrs. Van Buskirk, if they could have furnished the requisite proofs, would have been entitled to receive her pension from the date of the act to the time of her death. But it is understood that the present Attorney General has given a different construction to the pension law, and the rule of the department now is, that a pension is a gratuity to the pensioner, and not an inheritable estate, transmissable to the heirs at law of the deceased.

In this construction your committee concur; and, therefore, even if the proof of the service of Abram Van Buskirk was entirely satisfactory, the petitioner would be entitled to no relief. But she alleges that her mother made application, but died before she was able to perfect her proof. In relation to this, it is sufficient to say that, independent of the insufficiency of the evidence of service, there is no proof of any such application. The papers from the Pension Office afford no such evidence. The committee, therefore, recommend that the prayer of the petitioner be refused.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 153.

IN THE SENATE OF THE UNITED STATES.

APRIL 5, 1858.—Ordered to be printed.

Mr. FOSTER submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Thomas R. Carman, praying for a pension, respectfully report:

That his case is provided for in the various acts of Congress now in force in regard to invalid pensions, provided he establishes the facts set forth in his petition, which, by his proofs, he claims to do. The petitioner has never applied to the Pension Department, which your committee think he ought to do before applying to Congress for relief. They therefore recommend that the petitioner have leave to withdraw his petition.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 154.

IN THE SENATE OF THE UNITED STATES.

APRIL 5, 1858.—Ordered to be printed.

Mr. YULEE submitted the following

REPORT.

The Committee on Post Offices and Post Roads, to whom was referred the memorial of John M. Hinton, praying additional compensation to indemnify him for losses in consequence of the yellow fever at Norfolk, in 1855, *beg leave to report:*

The memorialist alleges that in the year 1855 he was contractor for carrying a daily mail from Norfolk, in Virginia, to Elizabeth City, in North Carolina, and a tri-weekly mail from the latter place to Edenton, in North Carolina, a distance in all of about seventy-five miles; that he undertook the service at almost a nominal price, viz: fourteen hundred dollars per annum, intending to rely upon the income derived from the transportation of passengers to and from those places —particularly between Norfolk and Elizabeth city—to make his profits, and to that end he put upon the line between those points four-horse instead of two-horse coaches; that soon after commencing service the yellow fever broke out in Norfolk, and prevailed to such an alarming extent that the town authorities of Elizabeth City passed an ordinance prohibiting the bringing of passengers, or even the mails to that place from Norfolk, and he was thereby deprived of all income from passenger transportation during the months of August, September, October, and a part of November, of that year, and since that time the travel between those points has been much less than it was before the epidemic appeared in Norfolk.

In view of these facts, and the fact that he sustained a heavy loss in supporting his team unemployed during the existence of the yellow fever at Norfolk, he prays that Congress will authorize to be paid to him additional compensation for said service, to indemnify him for said losses, and to bring the value of the service up to what it is really worth, aside from the profits of passenger transportation.

The casualty which interfered with the profits of the contractor was one which the government cannot insure against. If by reason of any unavoidable Providence he had been prevented from performing his contract, the penalty for failure might properly be remitted; but

it does not seem that the transportation of the mail was prevented, but only that during a season of epidemic, extending from August to November, he was prohibited by the corporate authorities of one of the towns through which his route passed from bringing passengers there, and his prayer is, substantially, that the government will recompense him for the loss of income thus suffered.

While the committee regret that so unhappy a cause arose to disturb and disappoint the calculations upon which the proposals of the contractor were based, they do not perceive any just principle upon which this case can be distinguished from the numerous others in which the expectations of profit from a contract to serve the government are disappointed by unforeseen and even unavoidable causes.

They therefore recommend the following resolution:

Resolved, That the prayer of the memorialist ought not to be granted.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM No. 155.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1858.—Ordered to be printed.

MR THOMSON, of New Jersey, made the following

REPORT.

[To accompany Bill S. 242.]

The Committee on Pensions, to whom was referred the petition of John Brest, asking an increase of his pension, beg leave to report:

The petitioner was a soldier in the war of 1812, and at the battle of Fort Meigs received a gun-shot wound, for which he was pensioned on the 18th of October, 1822, at the rate of four dollars per month, which was increased on the 13th of July, 1832, to six dollars per month.

He now prays for a further increase on account of increased disability. He adduces the testimony of two physicians whose professional respectability is well established, who say that "they found the said Brest to have received, apparently a long time since, a severe gun-shot wound in the left shoulder-joint; that said wound badly fractured the bones which make up the shoulder-joint, and the pieces still continue fractured and separate, and by reason of the disability produced by said fracture the said John Brest is totally unable to labor for a living."

The committee are satisfied of the total disability of the petitioner and think he should receive full pension, and, accordingly, herewith report a bill.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 156.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1858.—Ordered to be printed.

Mr. EVANS made the following

REPORT.

[To accompany Bill S. 243.]

The Committee on Revolutionary Claims, to whom was referred the petition of Virginia Rose, for herself and the other heirs of Captain Alexander Rose, of the revolutionary war, praying to be allowed commutation pay, have considered the same and submit the following report:

From the evidence submitted, there seems to be no doubt Alexander Rose was a captain in the Virginia continental regiment from the 17th of September, 1776, to the 3d of September, 1778; that he never received the commutation, and died about 1814. To entitle his heirs to the commutation of five years' full pay under the resolution of 1783, it is necessary that they should adduce satisfactory evidence that he served to the end of the war. The evidences of that fact are: 1st. That he received from the State of Virginia the amount of land which was due to an officer who so served; 2d. The affidavit of John Stith, a captain in the fourth regiment, dated in 1807, who swears that Alexander Rose was in the 6th regiment of infantry in the spring of the year 1776, and afterwards was promoted to the rank of captain, in which capacity he served to the close of the war, in 1783. There is also a certificate, signed by Samuel Coleman, in the following words: "It appears from the list transmitted from the War Office of the United States that Alexander Rose was considered as in service until the end of the war, and that he is entitled to additional land bounty for eight months." Copies of the above affidavit and certificate are certified from the executive department of Virginia, by the secretary of the commonwealth; 3d. A letter from the Assistant Secretary of State of the United States to the chairman of this committee, in which it is stated that "the name of Alexander Rose appears on the list of officers who served to the close of American independence, on file among the original Washington papers in that department.

But, on the other hand, there is evidence from the Pension Office (a copy of the Commissioner's letter is appended to this report) that the name of Alexander Rose is returned on the list of officers of the Virginia continental line, on file in that office, among the supernume-

rary cpatains, prior to October, 1780, who were entitled to one year's pay and bounty land.

There is an apparent inconsistency in these statement. But the committee think the preference should be given to the first; because—

1. The Washington papers, as to the service of the officers, are regarded as more reliable than the lists to be found in the other offices.

2. Because the affidavit and certificate are both confirmatory of the service to the end of the war.

3. That both may be true, as Captain Rose, although a supernumerary in 1780, may have again entered the army, and served as stated in the Washington papers.

Your committee, believing the claim just and the evidence satisfactory, report a bill to pay the heirs of Captain Alexander Rose the commutation of a captain of infantry.

Letters referred to in the foregoing report.

PENSION OFFICE, *March* 3, 1858.

SIR: I have to acknowledge the receipt of the letter of Mr. Robert A. Matthews, requesting, at your instance, this office to furnish the Committee on Revolutionary Claims such evidence as its records afford in relation to the services of Captain Alexander Rose, whose heirs claim that he served from the commencement to the close of the revolunary war. In reference thereto, I have to state that the name of Alexander Rose is returned on the list of officers of the Virginia continental line, on file in this office, among the supernumerary captains, prior to October, 1780, who were entitled to one year's full pay and bounty land from the United States.

It does not appear, on the list of officers above referred to, at what particular period Captain Rose became supernumerary; but a note or memorandum is made opposite his name in these words, "settled, per receipt book B, p. 152," which recipt book, it is presumed, is somewhere in the Third Auditor's office.

It appears that land warrant No. 1863, for 300 acres, issued March 3, 1791, to Alexander Rose, a captain of the Virginia continental line. No certificate for "commutation pay" appears ever to have been issued to that officer. It further appears, from an authentic list in this office of the grants of military bounty land warrants issued by the State of Virginia, that as early as November 11, 1785, a warrant for 4,000 acres issued to Captain Alexander Rose, for a three years' service; and that on the 20th of February, 1807, another warrant for 666⅔ acres issued to and in right of that officer, for a seventh year service; and again in September 1, 1807, a warrant for 444 acres issued for eight months additional service.

I am, sir, very respectfully, your obedient servant,

GEORGE C. WHITING,
Commissioner of Pensions.

Hon. JOSIAH J. EVANS,
U. S. Senate.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
November 2, 1835.

SIR: In reply to your letter of the 30th ultimo, inquiring whether Captain Alexander Rose, of the Virginia continental line, has ever been paid his commutation, I have the honor to state that it appears from the revolutionary records on file in this office that Captain Alexander Rose became a supernumerary officer in the Virginia continental line on the 3d of September, 1778. Officers who became supernumerary at that period of the war were not entitled to commutation of five years' full pay in lieu of half-pay for life.

With great respect.

PETER HAGNER,
Auditor.

Hon. GEO. LOYALL,
Norfolk, Va.

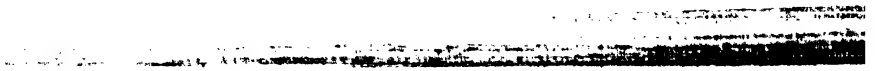
DEPARTMENT OF STATE,
Washington City, March 19, 1858.

SIR: I have the honor to state that the name of Alexander Rose appears on the list of officers who served until the close of the war of American independence, on file among the original "Washington papers" in this department.

I am, sir, very respectfully, your obedient servant,

JOHN APPLETON,
Assistant Secretary.

Hon. J. J. EVANS,
Chairman of Senate Committee on Revolutionary Claims.



35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 157.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1858.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 165.]

The Committee on Naval Affairs, to whom was referred "a bill authorizing the construction of a dry dock for the naval service," have had the same under consideration, and thereupon report:

The peace policy of our country with reference to its navy—the wisdom of which policy is manifest—has been to maintain in commission the smallest number of ships which our commercial or treaty relations would justify; to exhibit in this naval nucleus the nearest possible approach to the perfection of war vessels which the progress of the age would admit of, and to accumulate material and prepare the means to increase their number to meet any emergency with the least possible delay. The casting of cannon, the manufacture of gun carriages, of balls, shells, and small arms, the collection and preservation of ship timber, and the establishment of workshops, of docks, and of yards for construction and repair, are the direct results of this policy, founded on the maxim "*in time of peace prepare for war.*"

While England's systematic intervention in the affairs of Europe, no less than her insular position and large colonial possessions, constrain her to maintain, at an enormous expense, a formidable navy to preserve her peaceful relations, the policy of non-intervention and peace, which we have uniformly pursued, relieves us from this calamitous necessity.

It is a wise rule of military art to anticipate and prepare for, in any emergency, the full power of your adversary; and in all our naval policy and preparation, we have wisely looked to the naval power of England for the standard by which to measure our own strength. From the commencement of the last war to the present moment we have never lost sight of this rule; and as its natural consequence, we have seen that, whether in peace or war, whenever our ships have met hers, sloop for sloop, or frigate for frigate, we have thus far had no reason to question the naval power of our country.

Should we at any time become involved in that great calamity of nations—a war—and have Britain for our adversary, the contest would

necessarily be upon the deep; and the power of steam and the use of heavy shell guns would produce such fatal and brilliant single combats, ship against ship, as the ocean has never witnessed. The commencement of such a struggle might prove disastrous to our commerce and our seaboard; but with our unlimited means of creating a navy, no apprehensions as to the final result could be indulged.

England has a *built navy;* we have a navy *to build;* and all that she has ever accomplished, with her own unsurpassed energy and skill, would guide us in the struggle for superiority.

When we declared war in 1812 the American cabinet seriously contemplated dismantling and mooring our ships-of-war in port, from the belief that they would but go to sea to be captured; and our escape from this inglorious step was due more to the active interference of three of our naval officers than to any other cause.

England's navy is far more formidable now than it was then, while ours is not only relatively, but positively less so. Her naval estimates for the coming fiscal year call for 59,780 seamen and marines, and an expenditure of $50,644,075.

We are to have a steam navy; and in constructing it we must be controlled to a certain extent by the depth of water at the entrance of our ship harbors, which depth varies, between Maine and Texas, from fourteen to fifty feet; but to whatever class the ship to be built may belong, she should combine the heaviest battery and the greatest speed attainable by that class.

The union of speed and power is hereafter to determine naval contests; the greatest known battery afloat, combined with the greatest known speed, must constitute the perfection of a war ship; and with our unsurpassed resources and national and individual energy, warned by the failures and guided by the successes of other nations, it would be unreasonable to doubt our ability to approximate this perfection at least as nearly as any other people.

The establishment of docks at appropriate points for the examination and repair of ships is essential to a naval power. Before such docks came into use, a slight repair, even to a heavy ship's bottom, was a serious matter, involving immense labor, great consumption of time, and some risk to hull and spars. A frigate was necessarily relieved of her guns, and almost everything but her lower masts, and was then slowly and cautiously heaved keel out, or hauled up on the land; whereas now the frigate goes into dock all "atanto"—"manned, provided, and furnished" for her voyage, and is examined, repaired, and launched again in a few hours.

The only naval station or navy yard south of Norfolk is at Pensacola; and, though it was commenced in 1825, is admirably situated with reference to naval operations in, and the defence of, the Gulf of Mexico, the government has as yet failed to place it in the condition which the interests of the country demand.

With a climate of remarkable salubrity, inviting labor at all seasons, and with the best ship timber of the world growing around it, no attempt to build a naval ship there has ever been made until this year, when the present Secretary of the Navy, fully appreciating its importance, has required one of the sloops last provided for to be con-

structed there. But the yard is without the means of constructing engines or boilers; and as we shall rarely hereafter build any but steamships for our navy, we should at once provide at this and at each of our other navy yards the means of building the best and largest marine engines.

In 1847, with a want of judgment which reflects but little credit upon those public functionaries who are responsible for its adoption, and, as it has been frequently alleged in congressional debate, under a persistent lobby pressure, Congress was induced to appropriate money to construct a wooden scow dock at this yard; and the following report, made in 1856 by a board of skilful officers selected for the purpose of examining it, shows it to be worse than useless:

NAVY DEPARTMENT, *December* 27, 1856.

SIR: In reply to the resolution of the Senate of August 27, 1856, that the Secretary of the Navy cause a thorough examination "to be made by a board of military and civil engineers of the condition and probable duration of the wooden dock at the Pensacola navy yard, together with the annual expense of maintaining it in working condition, and also the cost of constructing at said yard, upon the most approved plan, a permanent stone dock, for docking the largest naval vessels which the depth of water on the Pensacola bar admits," I have the honor to transmit herewith a copy of the report of the examination made by a board of military and civil engineers, in compliance with the resolution.

I am, sir, very respectfully, your obedient servant,

J. C. DOBBIN.

Hon. J. D. BRIGHT,
President of the United States Senate.

NAVY YARD, PENSACOLA HARBOR,
December 8, 1856.

SIR: The undersigned, by letter of the 7th ultimo from the Secretary of the Navy, constituting a board for the objects designated in the following resolution of the Senate of the United States, passed 27th August, 1856: "*Resolved*, That the Secretary of the Navy cause a thorough examination to be made, by a board of military and civil engineers, of the condition and probable duration of the wooden dock at the Pensacola navy yard, together with the annual expense of maintaining it in working condition, and also the cost of constructing at said yard, upon the most approved plan, a permanent stone dock, for docking the largest naval vessels which the depth of water on the Pensacola bar admits," convened at the navy yard on the 25th November, and, having performed the duties assigned them, respectfully report:

The board (owing to the illness and subsequent decease of James Herron, civil engineer, one of its members) was deprived, during its whole session, of his valuable and efficient co-operation, and the sur-

viving members of the board wish to place here on record the testimony of their respect to the memory of the deceased, and their sense of the loss to the public service occasioned by this melancholy event.

Condition and probable duration of the wooden dock.

Under this head the board made the necessary examination of the outside and inside of the dock, by boring into the timbers and planking in those places where the rot might be expected soonest to be developed.

The results of the examination show that the rot has decidedly manifested itself in the large timbers constituting the framing of the side walls, and in the upright timbers of the gates of the dock; and the board, considering the progress of decay since the construction of the dock, and the causes which will facilitate the further deterioration of this structure, are of the opinion that, after the lapse of five (5) years, it will be hazardous to dock a ship, unless the sides of the dock and its gates shall have been first reconstructed.

The causes which have been (and will continue to be) active in the destruction of this dock are these:

1. The partial filling only of the side walls with water, and the high temperature which exists in those recesses.
2. The exposure of the ends of the upright timbers of the gates, without covering, to the influence of the sun and rain.
3. The partial filling only of the main chamber of the dock with water, and the exposure of this part to the weather.

Under the item, therefore, of deterioration of dock, the board is of opinion that the annual expenditure will be from $40,000 to $50,000 during the next five (5) years.

Annual expense of maintaining the dock in a working condition.

Under this head are enumerated only those current and usual repairs incident to an otherwise sound condition of the dock.

The floating-gate of the basin is much eaten with the worms, and will require reconstruction, at a cost of $13,000. This sum, being divided by the number of years representing the probable duration of the dock, will give, as the annual amount of repairs, $2,600.

Annual repairs of floating-gate	$2,600
" painting	8,000
" caulking	1,300
" repairs of wood work (casual)	250
" " engines and pumps	500
" " blocks, falls, and gates	1,000
" cleaning and attendance	1,659
Total annual repairs and expenses	8,100

Cost of constructing, at Pensacola navy yard, upon the most approved plan, a permanent stone dock, for docking the largest naval vessels which the depth of water on the Pensacola bar admits.

The board, having decided on a suitable site for the location of a stone dry dock, (sketch A,) examined with great care the records of borings, made in former years in this vicinity, and likewise executed a boring at one point of the proposed site.

The information thus obtained, as well as the experience derived from the successful construction of the permanent wharf, leave no doubt of the practicability of constructing a stone dry dock at a reasonable cost.

Estimated cost of stone dry dock.

Excavation	$50,000
Coffer-dam and sheet piling	46,800
Foundation	136,608
Masonry	776,572
Culvert and well	55,000
Gates	150,000
Drainage	20,000
Engine house	40,000
Stone pier wharf	125,000
Engine and boilers	35,000
Tools and fixtures	60,000
Removing coffer-dam	10,000
Contingent	20,000
Total	1,524,980

In making this estimate, the board has adhered to existing prices of work and materials, and has endeavored to make such a liberal allowance, under the several items, as to give confidence that the work, under the supervision of a competent engineer, can be undertaken and completed for the sum estimated.

Recapitulation.

FLOATING DOCK.—General condition, serviceable; probable duration, five (5) years; annual deterioration, for succeeding five (5) years, $40,000 to $50,000.

Annual, casual, and current repairs during succeeding five (5) years, $8,000.

STONE DRY DOCK.—Construction, practicable; estimated cost, $1,524,980.

Respectfully submitted.

CALVIN BROWN,
Civil Engineer.
JOHN NEWTON,
Captain Corps of Engineers.

Hon. J. C. DOBBIN,
Secretary of the Navy, Washington.

The following letter from the Secretary of the Navy furnishes some useful information as to this dock:

NAVY DEPARTMENT,
April 1, 1858.

SIR: I have the honor to acknowledge the receipt of your letter of the 22d ult., desiring certain information in relation to the floating dock at the Pensacola navy yard, and asking the opinion of the department as to the expediency of constructing a stone dock at that yard.

Having referred your letter to the chief of the Bureau of Yards and Docks, I enclose, herewith, a copy of his reply, dated the 25th ult., which affords all the information desired, except the opinion of the department as to the expediency of constructing a stone dock at the Pensacola yard.

I am clearly of opinion that a floating dock is but a temporary expedient, and that, in view of its perishable nature, for a series of years, a stone dock would be the most economical.

As the board of engineers who examined the floating dock at Pensacola, in 1856, state that it would be hazardous to dock a ship in it, after a lapse of five years, without a reconstruction of very material parts, the advantage of a stone dock is very apparent.

I am, very respectfully, your obedient servant.

I. TOUCEY.

Hon. S. R. MALLORY,
Chairman Committee Naval Affairs, U. S. Senate.

BUREAU OF YARDS AND DOCKS,
March 25, 1858.

SIR: In reply to the interrogatories contained in the letter from the Hon. S. R. Mallory, chairman of the Committee on Naval Affairs of the Senate, dated the 22d instant, in reference to the floating dock, basin, and railway at Pensacola, which was referred by you to this bureau, I have to submit the following answers:

1. As to the present condition of the dock.

Answer. The dock is believed to be in serviceable condition, although signs of decay have manifested themselves in the framing of the side walls and upright timbers of the gates.

2. The total cost of the dock up to this time.

Answer. The total cost of the dock, basin, and railway, to the 31st of December last, was $1,004,883 92.

3. The average annual cost of keeping the dock in efficient repair.

Answer. The cost of repairs, including the expense of mooring the dock, from the 1st of July, 1853, to the 31st of December, 1857, (4½ years, is $68,908 42, making an average annual expenditure of $15,312 98.

4. The probable duration of the dock.

Answer. The board of engineers who examined the dock report, under date of 8th of December, 1856, "that, after the lapse of five years (from that date) it will be hazardous to dock a ship unless the sides of the dock and its gates shall have first been constructed."

5. The cost of the basin constructed for the dock, and the railway and its appurtenances.

Answer. The original cost of the basin and railway was $364,319; but an additional tier of coping has been put upon the basin, to raise it to the grade of the yard, at a cost of $18,243 84, making the entire cost $382,562 84, which amount is embraced in the sum stated in answer to the second question above.

6. The length and capacity of the dock.

Answer. The length of the dock is 350 feet, and it is capable of docking United States war steamers of the largest class.

7. As to its capability of docking the new steam frigates.

Answer. It is of capacity sufficient to dock the new steam frigates.

8. The probable cost of a permanent stone dock at Pensacola of sufficient capacity to dock said frigates.

Answer. The estimated cost, as submitted by the board of engineers, in December, 1856, before referred to, is $1,524,980.

The foregoing embraces information on all the points of Mr. Mallory's letter referred to the bureau, excepting that asking the opinion of the department as to the expediency of constructing a stone dock at Pensacola. Mr. Mallory's letter is herewith returned.

I have the honor to be, very respectfully, your obedient servant,

JOS. SMITH.

Hon. I. TOUCEY,
Secretary of the Navy.

The following extracts, touching the importance of Pensacola as a naval station, are taken from the reports of Mr. Upshur, Secretary of the Navy, made to the Senate in response to resolutions:

NAVY DEPARTMENT,
January 31, 1842.

SIR: In compliance with the resolution of the Senate of the 22d of July, 1841, I have the honor to make the following report:

I deemed it proper to submit the subject to which the resolution refers to the Board of Naval Commissioners, for their opinion and suggestions, preparatory to any examination of it by myself. Their known ability and experience in all matters relating to the naval service give to their views more importance than can justly attach to mine. I now enclose their report, to which I respectfully refer you.

I am deeply impressed with the absolute necessity of an adequate naval force to protect our commerce in the Gulf of Mexico. The mouth of the Mississippi, so far as commerce is concerned, is not at the Balize; it is in the narrow pass between Cuba and Florida. The

trade-winds and the gulf stream, setting in from the east to the west, forbid the passage of vessels on the south side of Cuba; they are under the necessity of following the course of that stream, and passing into the Atlantic through the Gulf of Florida. Hence the entire trade of the Mississippi and its tributary rivers, with the exception of the small portion of it which is carried on with the countries on the west and south of the Gulf of Mexico, is at the mercy of whatever power may happen to command the Gulf of Florida. Two steam frigates, actively employed, are sufficient for this purpose. It follows, of course, that the commerce of a country large enough and fertile enough to support a population half as great as that of Europe, may be destroyed by any maritime power, at a cost too small to be worthy of calculation

The unsettled condition of the governments of the former Spanish provinces on the Gulf of Mexico requires that our trade in the interior of that gulf should be protected by a suitable naval force. Hitherto we have had no squadron cruising there, although this department has had frequent occasion to send single ships, in order to vindicate the rights and redress the actual wrongs of our citizens. There is but little probability that better systems of government, insuring a more strict respect for the rights of friendly nations, will be established in any short time. We may therefore properly consider the existing state of things, among other reasons, for establishing a permanent force, to be always ready to act in every part of that gulf.

NAVY DEPARTMENT, *March* 7, 1842.

SIR: In compliance with a resolution of the Senate of the 16th ultimo, I have the honor to enclose reports and tabular statements from the Fourth Auditor and the commissioners of the navy.

From the report of the commissioners of the navy, it will appear that the navy yard at Pensacola is not in a condition for any extensive works on ships-of-war. No general plan of the yard has yet been agreed on, which is probably the reason why no further progress has been made in the several parts of the establishment. Repairs to a small extent, and such as do not require the docking of the ship, may now be made at that yard, but no vessel can be built there; and even extensive repairs are difficult for want of the necessary docks and wharves, and of a naval constructor, for which last no appropriation has been made.

It is my intention to proceed as rapidly as the means at my disposal will allow in the completion of all the necessary works, so as to render the yard useful for all naval purposes. But little can be effected, however, with the small means heretofore placed under the control of the department, and applicable to that object.

Of the importance of this yard, I have already expressed my views in a report which I had the honor to make to the Senate on the 31st day of January last, in conformity with their resolution of the 22d of

July last. To this report I respectfully refer. To me it is perfectly evident that the navy yard at Pensacola ought to be immediately completed, upon the most enlarged and useful scale, and that every preparation should be made for the full and perfect protection of the commerce of the Gulf of Mexico. That commerce is of incalculable value, and its only course is through the Gulf of Florida—it may be interrupted and destroyed by an enemy with a single active cruiser. The naval force designed for the Gulf of Mexico should be stationary there. Its usefulness will be impaired, to a great extent, by subjecting it to the necessity of resorting to the Atlantic yards for supplies and repairs; hence, every requisite facility of that sort ought to be afforded in the gulf itself, by the establishment of suitable navy yards and depots. As the commerce of the Gulf of Mexico is much more valuable than that of any portion of our country of equal extent, a navy yard, by which the necessary means of protecting that commerce may be supplied, is proportionally more important than a navy yard at any other place.

The expediency of establishing a dock at this yard of sufficient magnitude to dock the largest ship which the depth of the Pensacola bar will admit is unquestionable, and Congress has acknowledged it by authorizing the construction of the scow dock.

The insufficiency and worthlessness of this structure are apparent, from the report of the examining engineers, who say that, "*after the lapse of five years, it will be hazardous to dock a ship, unless the sides of the dock and its gates shall have been first reconstructed.*"

This report was made in December, 1856, and as the dock was turned over to the United States in April, 1855, its rapid decay may be estimated. The very details of the structure must insure its rapid decay. The language of the report is—

Condition and probable duration of the wooden dock.

Under this head the board made the necessary examination of the outside and inside of the dock, by boring into the timbers and planking in those places where the rot might be expected soonest to be developed.

The results of the examination show that the rot has decidedly manifested itself in the large timbers constituting the framing of the side walls, and in the upright timbers of the gates of the dock; and the board, considering the progress of decay since the construction of the dock, and the causes which will facilitate the further deterioration of this structure, are of the opinion that, after the lapse of five (5) years, it will be hazardous to dock a ship, unless the sides of the dock and its gates shall have been first reconstructed.

The causes which have been (and will continue to be) active in the destruction of this dock are these:

1. The partial filling only of the side walls with water, and the high temperature which exists in those recesses.

2. The exposure of the ends of the upright timbers of the gates, without covering, to the influence of the sun and rain.

3. The partial filling only of the main chamber of the dock with water, and the exposure of this part to the weather.

Under the item, therefore, of deterioration of dock, the board is of opinion that the annual expenditure will be from $40,000 to $50,000 during the next five (5) years.

The construction of a stone dock must necessarily involve from five to seven years, as such works are usually conducted; and your committee think it should be commenced at once, and they report a bill accordingly.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 158.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1858.—Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

[To accompany Bill S. 245.]

The Committee on Claims, to whom was referred the memorial of George Jewett, executor of Luther Jewett, late collector of the districts of Portland and Falmouth, praying an allowance for certain money, &c., have had the same under consideration, and thereupon report:

The late Luther Jewett, as collector of the customs for the districts of Portland and Falmouth, being required by the Treasury Department to deposit the public money in his hands from time to time with the assistant treasurer of the United States at Boston, asked authority of the department to employ Messrs. Langley & Co., expressmen, to carry the money. From the testimony on file before the committee, it clearly appears that Langley & Co., whose business was exclusively that of expressmen, and who were employed by the banks and merchants generally to carry specie and money securities between Boston and Portland, were in good standing, and had the entire confidence of the public. It would seem, too, that, with the exception of going personally to Boston with the money, the employment of this express was as safe and prudent a course as Mr. Jewett could have adopted.

In his application, Mr. Jewett stated that the charge of Langley & Co. would be "twenty-five cents for each thousand dollars;" and, in reply, the department, acknowledging the receipt of his letter, gave no distinct permission to employ the express, but said: "*I have received your letter of the 3d instant, in reply to mine of the 23d ultimo. I would state, in reply, that the act of March* 3, 1849, *requires that the collectors shall deposit their collections; the expenses attending such deposit will be a proper charge upon the treasury, and will be allowed in the settlement of your account as disbursing agent.*"

Jewett made his deposits, regarding this letter as his authority, with the sub-treasury at Boston, through Langley & Co., and the expenses were charged in his accounts and allowed by the department.

Langley & Co. suddenly failed in the fall of 1852, and Jewett now

found that they had failed to deposit two sums of money severally placed in their hands—one of $1,000 and one of $1,500.

This failure was total, and brought great distress upon the mercantile community; and the committee are assured, by a reliable statement, that Jewett himself lost a large sum of his own money by it.

The memorialist produced Langley & Co.'s receipt for the $1,000, but none for the $1,500 nor does he make such proof as your committee deem satisfactory that he sent this sum by the express.

Under the cirumstances, your committee report a bill for the relief of the memorialist to the extent of the sum of $1,000.

35TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 159.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1858.—Ordered to be printed.

Mr. THOMSON, of New Jersey, submitted the following

REPORT.

The Committee on Pensions, to whom was referred the memorial and accompanying papers of Mrs. Nannie Denman, widow of First Lieutenant Frederick J. Denman, deceased, late of the United States army, asking a pension, beg leave to report:

Lieutenant Denman was a graduate of West Point in 1842, and was attached to the first regiment of United States infantry. He was stationed for several years on the northwestern frontier, and when the Mexican war broke out was ordered, with his company, to join General Taylor, and served through the war. He was afterwards stationed at Fort Terrett, in Texas, where he died March 2, 1853, from an accidental gun-shot wound.

The circumstances of his death are set forth in the official communication of Assistant Surgeon Cooper, hereunto appended, marked A. There is no law granting a pension to the widow of an officer who died under the circumstances stated, nor are the committee aware of any special act having been passed in such a case. They are not prepared to establish a precedent in the case of Mrs. Denman, and therefore recommend that the prayer of the petitioner be denied, and ask to be discharged from the further consideration of the case.

A.

WASHINGTON CITY, *February* 13, 1854.

SIR: In reply to your request for information relative to the death of Lieutenant F. T. Denman, adjutant of the 1st regiment of United States infantry, I make the following statement, derived from official letters received at Fort Duncan, Texas, whilst I was on duty at that post:

"Lieutenant Denman, of the 1st United States infantry, left Fort Terrett, Texas, on the 2d of March, 1853, accompanied by Lieutenant Holabird, of the same regiment, for the purpose of hunting. At some five miles distant from the post, whilst going through a chap-

paral, the rifle in the hands of Lieutenant Holabird was accidentally discharged, and the ball from it struck Lieutenant Denman, who was in the advance of him, in the thigh, in consequence of which wound he died shortly after the arrival of the medical officer from the post at the scene of the accident."

Respectfully, your obedient servant,

GEORGE E. COOPER,
Assistant Surgeon, U. S. A.

SURGEON GENERAL, *U. S. A.*,
Washington, D. C.

35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 160.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1858.—Ordered to be printed.

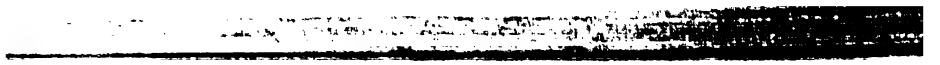
Mr. THOMSON, of New Jersey, submitted the following

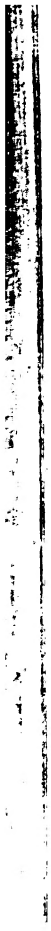
REPORT.

The Committee on Pensions, to whom was referred the petition of Joseph Paul, asking to be allowed a pension, have had the same under consideration, and submit the following report:

Mr. Paul alleges in his petition that he served as a private soldier in the war of 1812, having been draughted at Delaware county in the State of New York, on or about the 5th of September, 1814, for the term of three months, and that he was discharged on account of sickness at the end of two months and a half. There is, however, no proof offered in corroboration of these allegations. The disability of which he now complains, is not, in the opinion of the committee, the result of disease contracted or injury received while in the service of his country.

The committee, therefore, recommend that the prayer of the petitioner be denied.





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